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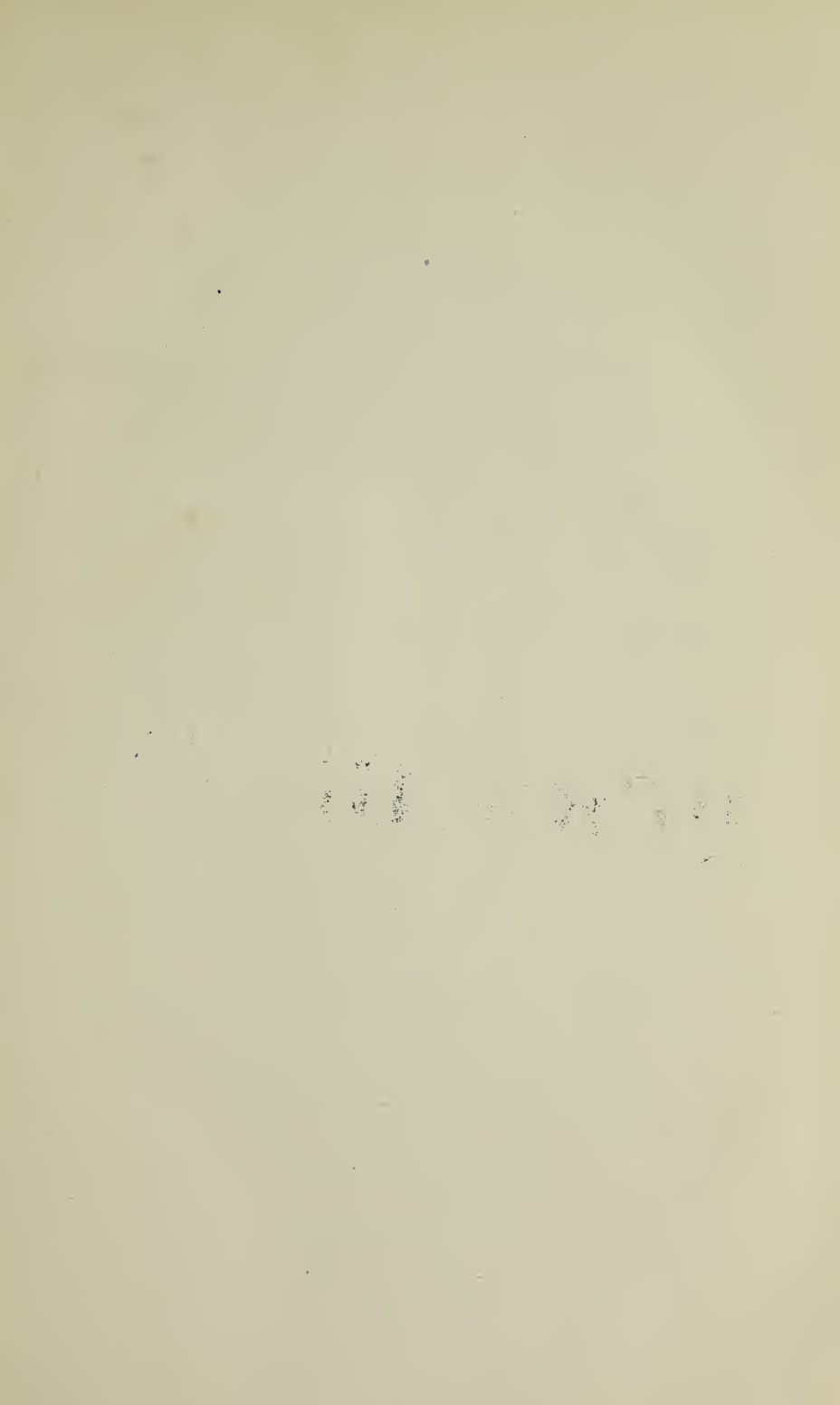
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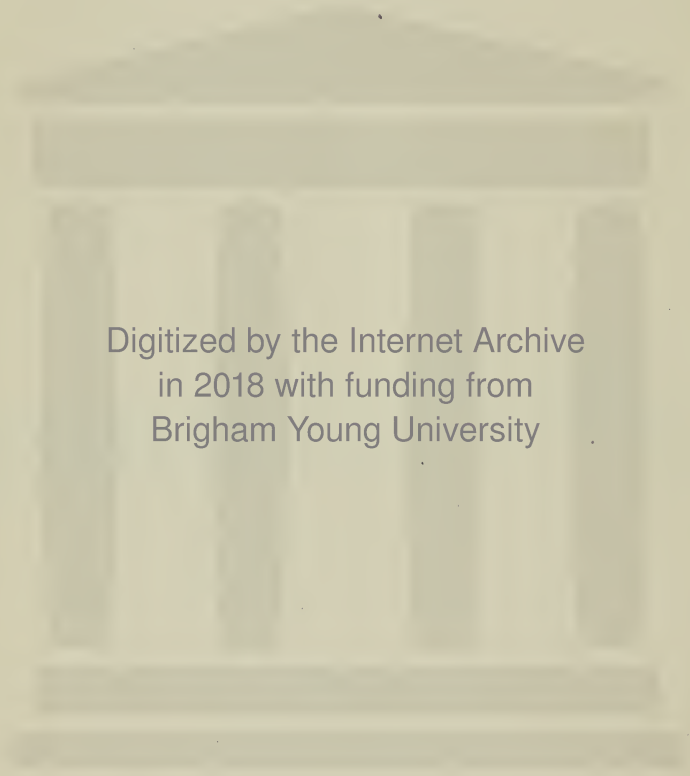
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THE QUARTERLY

OF THE

TEXAS STATE HISTORICAL ASSOCIATION

VOLUME II.

JULY, 1898, TO APRIL, 1899.

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CONTENTS.

NUMBER 1; JULY, 1898.

THE LIFE AND SERVICES OF ORAN MILO ROBERTS..	Dudley G. Wooten.....	1
THE OLD FORT AT ANAHUAC.	Mrs. Adèle B. Looscan....	21
SKETCH OF THE DEVELOPMENT OF THE JUDICIAL SYSTEM OF TEXAS. I.....	John C. Townes.....	29
H. P. BEE.....	F. R. Lubbock	54
THE CHEROKEE NATION OF INDIANS	V. O. King	58
JOTTINGS FROM THE OLD JOURNAL OF LITTLETON FOWLER.....	Mrs. Dora Fowler Arthur.	73
BOOK REVIEWS		85
NOTES AND FRAGMENTS		94
QUESTIONS AND ANSWERS		99
AFFAIRS OF THE ASSOCIATION.....		103

NUMBER 2; OCTOBER, 1898.

THE CAPITALS OF TEXAS	O. M. Roberts.....	117
RUTERSVILLE COLLEGE	Mrs. Julia Lee Sinks.....	124
SKETCH OF THE DEVELOPMENT OF THE JUDICIAL SYSTEM OF TEXAS. II.....	John C. Townes.....	134
ENDING LAWS OF THE REPUBLIC OF TEXAS. II.....	C. W. Raines.....	152
NOTES ON THE HISTORY OF LA BAHÍA DEL ESPÍRITU SANTO	Bethel Coopwood..	162
EARLY EXPERIENCES IN TEXAS. II.....	Mrs. Rosa Kleberg	170
NOTES AND FRAGMENTS.....		174
QUESTIONS AND ANSWERS		179
AFFAIRS OF THE ASSOCIATION.....		181

NUMBER 3; JANUARY, 1899.

THE PRISON JOURNAL OF STEPHEN F. AUSTIN.....		183
CAPTAIN ADOLPHUS STERNE.....	W. P. Zuber.....	211
THE FOUNDING OF THE FIRST TEXAS MUNICIPALITY. I. T. Cox		217
LIFE OF GERMAN PIONEERS OF EARLY TEXAS.....	Caroline Von Hinueber.....	227
TWO LETTERS FROM A MIER PRISONER.....		233
A BELATED COLONIST... ..		237
BOOK NOTICES AND REVIEWS.....		240
NOTES AND FRAGMENTS.....		243
QUESTIONS AND ANSWERS		248
AFFAIRS OF THE ASSOCIATION.....		249

NUMBER 4; APRIL, 1899.

DESCUBRIMIENTO DE LA BAHÍA DEL ESPÍRITU SANTO	Damian Manzanet.....	252
TRANSLATION: DISCOVERY OF THE BAY OF Es- PIRITU SANTO.....	Lilia M. Casis.....	281
THE BATTLE OF GONZALES.....	Miles S. Bennet.....	313
BOOK REVIEWS AND NOTICES.....		317
NOTES AND FRAGMENTS.....		319
AFFAIRS OF THE ASSOCIATION.....		321

THE QUARTERLY

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TEXAS STATE HISTORICAL ASSOCIATION

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THE PRESIDENT'S ANNUAL ADDRESS: THE LIFE AND SERVICES OF ORAN MILO ROBERTS.¹

DUDLEY G. WOOTEN.

Notwithstanding the multitude of those who, in a country like this, rise to comparative eminence among their fellow-men, and enjoy a measure of popular renown during their lives, there are very few who really achieve enduring distinction, or leave behind them such evidences of practical usefulness in having lived and labored, as to make them

“On Fame’s eternal bead-roll worthy to be filed.”

Among the number of those in Texas who have attained this exceptional station was the venerable jurist, statesman, and patriot

¹The late Oran M. Roberts, the first President of the Association, died at his home at Austin, May 19, 1898. His death devolved the Presidency upon the First Vice-President, Mr. Wooten, who appropriately chose to deliver the Annual Address upon the life and services of the distinguished statesman, jurist, and historian, whose labors contributed so largely to the foundation and successful inauguration of the work of the Texas State Historical Association. The Address was delivered on June 16, 1898.

whose recent death has irreparably bereaved this Association, and in commemoration of whose virtues and services it has been deemed appropriate that I, his unworthy successor, should today briefly speak.

No more delicate and difficult office can devolve upon a speaker than to truthfully, yet fitly, pronounce proper words of memorial and eulogy upon one lately dead—especially if that one was both a public character and a personal friend. There is danger that such an address may rise to the pitch of extravagant laudation, or sink to the level of private panegyric. When it does either, it fails to serve the purpose of a true encomium and loses the value of a practical lesson. Every life whose services are worthy of public recital and remark has been a contribution to the history of the land and people in which its labors were wrought, and every attempt to describe and discuss such a life should in some degree answer the purposes of historical truth and subserve the interests of that philosophy of living which History is said to teach by example. These desirable attributes of a memorial address are thus outlined rather by way of introduction, than as prophetic of what I shall endeavor to say in the inadequate sketch of our late President and his life-work in the upbuilding of the State that reveres his memory and mourns his loss.

Oran Milo Roberts was a native of South Carolina, and although no appreciable portion of his life was spent there, the distinctive social and political influences of that State's historical attitude on all the current questions of his era were plainly visible in his private and public career. He was reared to manhood and began his active labors in the State of Alabama, where his early training as a lawyer and in the fundamental principles of constitutional government was very thorough and essentially practical. It was the period of incipient division between the North and South upon the great questions that later arrayed them in actual hostility. The leaders of Southern thought were marshaling their forces of logic and protest on the side of the strict construction, States-rights theory of the Federal Constitution, and the first sounds of that memorable conflict that afterwards thrilled the country with eloquence and argument and shook the continent with the roar of battle, were just beginning to challenge the attention and excite the alarm of conservative and observant men. Young Roberts

was taught in that school of stoic statesmanship that never sacrificed a theory of political science to an advantage of commercial enterprise, and preferred the principles of the Constitution above the temporary seductions of industrial prosperity. How loyal he remained to the ideals of his youth was attested in the Secession Convention of 1861, on the field of battle, in his masterly discussions of Federal questions, and in the writings and lectures of his later years.

Having fairly entered upon the practice of the law and served a term in the Legislature, at the age of twenty-six he came to the Republic of Texas. It was the darkest and most discouraging moment in the history of the new government. President Lamar's disastrous administration was just closing, bankruptcy and ruin stared the Republic in the face, Indian wars and domestic poverty had almost disheartened the people, and the menace of Mexican invasion filled the future with gloom and foreboding. And yet the men who had redeemed this land from tyranny and established its freedom on the foundations of constitutional order, were equal to the task of preserving and perpetuating what they had won. Whatever may be said of their successors in field and forum and in the paths of peaceful industry, the leaders and workers in Texas in that period from 1836 to 1846 have had no superiors in all the proud and potent prosperity of later years. Their practical good sense, their unfading faith in the ultimate success of the government, their broad and generous estimate of the things necessary to a nation's happiness and growth, their loyalty to the traditional virtues and institutions of their race, their wonderful acuteness and discernment in establishing the laws and policies of the Republic and State upon the highest and safest plane of patriotic wisdom, were something marvelous, considering the circumstances and conditions of the time. A recent reading of the debates and journals of the Constitutional Convention of 1845 leads me to affirm without hesitation that the proceedings of that body displayed a depth of devotion to fundamental truth, in political philosophy, a practical appreciation of the essential features of a free government, and a liberality of policy in dealing with the problems of popular institutions, that are not surpassed in the reported deliberations of any similar body ever assembled on this hemisphere.

It was into this "goodly fellowship" of brave and thoughtful pioneers, lawyers, and statesmen that the young Alabama attorney and legislator came in 1841. His immediate success and sustained prominence among such men are the most conclusive proof of his ability, attainments, and personal worth. Accident will not account for such events, nor does adventitious circumstance supply a life-long support in the paths of public service and distinction. He settled at San Augustine, then the seat of civilization in Eastern Texas, and the center of that circle of skillful lawyers and strong men of whom Rusk and Henderson and Jennings and Ochiltree and K. L. Anderson were chiefs. The third year after his arrival in Texas, President Houston appointed him district attorney of that district, it being the Fifth Judicial District of the Republic. It is to be noticed that his first appearance in the reported decisions of the Supreme Court was as attorney for Sam Houston, in a case reported in the first volume of the "Reports." It was an early tradition of the East Texas bar that Roberts was an exceptionally good prosecutor, not by the arts of oratory, but by his skill in the management of his cases and his shrewd judgment in the selection of his juries. That his service was satisfactory is demonstrated by the fact that when the State government was organized in 1846, Governor Henderson, who lived and practiced law with him in the same district, appointed him one of the district judges, assigning him to the old Fifth District, where he had won his fame as prosecutor.

As constituted under the Republic, the judicial department consisted of the Supreme Court, district courts, and inferior courts, such as county and justices' courts. There could not be less than three nor more than eight judicial districts, with a judge in each, and these sitting *in banc*. with the Chief Justice composed the Supreme Court. This arrangement, together with the law that required the district judges to alternate or exchange in holding their courts, gave to these tribunals a wide, varied, and controlling influence in the formation and development of our early jurisprudence, required a high order of ability in the judges themselves, and promoted a readiness and versatility of judicial talent and attainment, that made the bench of those days illustrious for its learning and character. Under the State government, inaugurated in 1846, the Supreme Court was created as a separate tribunal

composed of three judges, appointed by the Governor and holding office for six years; and there were at first eight district courts, the presiding judges of which were also appointed by the Governor for six years. An amendment to the Constitution in 1850 made all judicial and most of the State officers elective. The first judges appointed for the several districts, in 1846, were James Love, William Jones, R. E. B. Baylor, M. P. Norton, O. M. Roberts, William B. Ochiltree, John B. Jones, and John T. Mills. All of these had been district judges under the Republic except Love and Roberts. Although they no longer constituted part of the Supreme Court, the habits and influence of the system formerly existing continued to lend great efficiency and skill to the administration of justice by these courts; and by reason of the large territory covered by each district, the variety and novelty of the questions constantly arising for settlement, and the self-reliance, original thought, and profound discretion demanded and inspired by the situation, the district bench was highly respected and was a powerful factor in laying the foundations of our judicial fabric.

The Supreme Court was then composed of that triumvirate of legal worthies—the *dei majores* of Texan jurisprudence—Hemphill, Wheeler, and Lipscomb; but it is not too much to say that their labors in moulding the marvelous composite of the Civil and the Common Law, with its new features of marital and homestead rights, and its incomparable system of pleading and practice without technical forms of action or distinctions between law and equity, were vastly aided and enlightened by the intelligence, zeal and industry of the early district judges. The decisions of the Supreme Court under the Republic had been few and desultory, their reported cases were imperfectly presented, precedents for the anomalous questions that arose were scarce and inadequate, and the work of both bench and bar was arduous and trying in the extreme.

Judge Roberts was located in the oldest and most populous section of the State, the bar of his district was the largest and admittedly the ablest in Texas, and the character of litigation tried before him was correspondingly complicated and difficult; so that his experience was laborious and varied, his capacity for administration and decision was taxed to the utmost, and his successful discharge of his duties was so well attested that it led to his pro-

motion at the first opportunity that presented itself to the people and the profession.

Had he served out his full term as judge he would have occupied that position until 1852, but he resigned in 1851, after five years' service, and returned to the practice of the law, settling in Shelby county. Although then and always pre-eminently a lawyer and a judge, his practical bent of mind and his intense interest in the great questions of constitutional controversy in the domain of politics enlisted his active participation in public discussions and political movements.

Speedily after her annexation to the Union, Texas began to feel the compelling force of her new relations and the responsibilities they entailed. The Democratic party had brought her into the sisterhood of States, and to that historic organization she gave her earliest, as she has maintained her lasting allegiance. Annexation, in fact, precipitated the issues that afterwards rent the country in twain and convulsed it in civil strife. The "boundary dispute," adjusted by the compromise measures of 1850, reopened the vexed controversy of free and slave territory by practically abrogating the Missouri Compromise of 1820. It is strange what remote influences sway the destinies of nations, and how far it is to reach the genesis of revolution. When Napoleon sold Louisiana to the United States in 1803, his attention was called by his minister, the Count de Marbois, to the fact that its southern and western limits were not definitely described in the cession; to which the First Consul, with characteristic prevision, replied that "if an obscurity did not already exist, *it would be good policy to put one in the treaty.*" That obscurity remained to vex France, Spain and the United States through years of filibustering along the Sabine; it ran red with blood in the expeditions of Magee and Long; it was partially removed by the treaty of 1819 with Spain; it arose in another form in the Mexican War of 1846; its prolific progeny of contention roused the Union to fever heat in the campaign for Annexation and in the debates of Congress over the Compromise of 1850; its voice reverberated in the strife of 1861; and at last its expiring echoes were heard in the Greer County Case in 1896.

During the years from 1847 to 1857 Texas politics were rapidly developing along the lines of the pro-slavery, States-rights doc-

trines, and all the leading men of the State arrayed themselves upon the paramount issues that were beginning to alarm the South for her liberties and her life. Judge Roberts, true to his South Carolina parentage and his Alabama training, was a staunch and formidable advocate of the strict construction of the Federal Constitution, the reserved rights of the States, and the inviolable sanctity of their domestic institutions. In 1853 he was a candidate for the Democratic nomination for Congress in the Eastern district, his opponent being William C. Young, of Red River county. For two days of balloting he came within a few votes of two-thirds of the convention, when George W. Smith was nominated as a compromise candidate. In the exciting State campaign of 1855, when the "American" or "Know-nothing" party made its struggle for supremacy in Texas, in alliance with so-called "Union Democrats," he took an active part in opposition to that movement, in company with such men as Pinckney Henderson, Frank Bowden, Malcolm D. Graham, Louis T. Wigfall, John H. Reagan, George W. Chilton, and M. D. Ector.

In the fall of 1856, Abner S. Lipscomb, associate justice of the Supreme Court, died, and an election to fill the vacancy thus created was held in the following February. The leading candidates were Peter W. Gray, Thomas J. Jennings, Benjamin C. Franklin, John Taylor, and Oran M. Roberts. These gentlemen were not urged or nominated by any political organization, but were put forward by the bar and the people in the localities where they lived. It was a very close race between Judges Gray and Roberts, the latter being elected by only one hundred votes over his leading opponent. Judge Roberts at once assumed his place on the Supreme bench, and there he first exhibited that marvelous capacity for analysis, discussion of facts, and the complete evisceration of a case—body, bones, and tissue—that have made his decisions such lasting monuments of judicial learning and practical utility.

On November 9, 1857, Judge John Hemphill, the Chief Justice of the court, was elected to the United States Senate, creating another vacancy. It was the universal desire that Judge Wheeler, who was already an associate justice since the organization of the court, should succeed to the chief-justiceship, but he was averse to being a candidate before a political convention, by which method

it was now for the first time proposed to nominate the judges. The matter was at last adjusted by Judge Roberts introducing a resolution into the convention, which was unanimously adopted, declaring Judge Wheeler to be the choice of the bar and people for the first place on the bench, and Judge Constantine Buckley was nominated for associate justice. But James H. Bell ran against the nominee and was elected, thus composing the court of Wheeler, Roberts, and Bell.

It would be impossible here and now to discuss the great work done for Texas jurisprudence by Judge Roberts' service on the highest court of the State. In all he was a member of the court nearly fifteen years, being Chief Justice during seven years of that time. His marked traits as an appellate judge were his implacable hostility to judicial legislation—to judge-made law, his absolute impartiality, his practical knowledge of almost every subject of inquiry that came before him, his philosophic devotion to principles rather than precedents, his boldness in adhering to a right line of decisions or in departing from a wrong one, his tireless industry in the study of details, and finally, the simplicity, clearness, logical conclusiveness and the *completeness* of his treatment and disposition of a case. When you read one of his decisions you will have read all there is to know about the law and facts involved. He decided the case and all there was in it. There was no blind groping after authorities to support the conclusions arrived at, but the fundamental principle at issue was first sought after, apprehended, stated, applied, and then enforced with plain and practical directness. He went to the sources and springs of the law as they gush forth bold and pure from the fountains of English and American jurisprudence, instead of seeking their wasted stream in the little devious, dirty, and trickling rills of isolated and conflicting decisions by a multitude of courts and a minimum of judicial wisdom. When he had written an opinion in a case, there was no doubt or difficulty in understanding just what had been done or was required to be done in order to dispose of it. If the judgment of the lower court was affirmed, the whole law of the case was discussed, the essential rulings of the trial judge were examined and approved, or, if erroneous but not material, the errors were pointed out as a warning and instruction for the future. If the judgment was reversed and the cause remanded, every vital issue of the law

involved was completely and clearly defined, the difficulties and errors of the whole record were examined and dissipated, and when the case came on for a second trial below there was no room for hesitation, controversy, or confusion as to what the Supreme Court had declared to be the law of the case, and *the whole case*.

It may be said that these qualities were characteristic of all the early judges of our highest court. For the first thirty-five or forty years of its history it was the crowning virtue of that tribunal that it *decided* causes, decided them *on principle*, decided them *on lines of logical consistency*, and decided them *completely and finally*.

It was the peculiar distinction of Judge Roberts not only to have excelled in this direction, but to have largely contributed while on the bench to the bringing about of these results. When he first came into the court, in 1857, there had never been an open dissent of opinion by any of the judges. No doubt they had often differed among themselves as to the correct decision of cases and the disposition of certain questions, but no one of the court had ever filed and published his dissent, supported by a discussion of the points at issue. It was, therefore not a welcome announcement to his colleagues when Judge Roberts gave notice that he felt constrained to inaugurate the practice. It seems that he had previously disagreed with his brethren upon some decision already made, but forebore to publicly announce his opposing views, telling them, however, that in future he would reserve the right to deliver a dissenting opinion in all cases where he deemed the questions of sufficient importance to warrant his open protest against the action of the majority of the court. The occasion for this first arose in the case of *Cain vs. the State*, reported in Volume 20 of the Texas Reports, involving the question of the construction of statutes passed at the same session of the legislature. Judge Wheeler, speaking for himself and Chief Justice Hemphill, decided according to the old English rule by which all acts of Parliament, being part of the same *roll*, should be construed together as one act and of the date of the first day of the session. Judge Roberts opposed this view, as not in consonance with the methods of American legislation, and not consistent with the later rules of construction even in England. His dissenting opinion is unquestionably the law as it is now recognized by the great weight of authority. There is one singular feature about this case, which

may have been noticed by those who have read it. The opinion delivered by the majority of the court appears to be a direct reply to the argument of the dissenting opinion of Judge Roberts, which is accounted for by the fact that Roberts wrote and filed his *dissent* before the main opinion was composed by Judge Wheeler, who had it before him when he prepared his opinion. This I learned from Governor Roberts himself.

Another influential and salutary innovation introduced by him into the methods of the Supreme Court, was that of requiring all written opinions to be submitted to the full bench before being handed down as the decision of the court. This rule he inaugurated when he became the Chief Justice in 1864, although he had contended for it when he was associate justice. It will be remembered that one of the strongest criticisms Thomas Jefferson leveled at the Supreme Court of the United States was that, in his day, the opinions of that tribunal were the individual utterances of the several judges and not the concurrent conclusions of the whole court, arrived at after full discussion and ratification by all the justices. There are often many things in a judicial opinion that are not necessary to be decided or conceded in order to support the judgment announced. As is frequently remarked "the decision is all right, but the reasoning is all wrong." These *dicta* from the bench simply confuse the course of judicial conduct, mislead the bar, and often become absolutely harmful in the administration of the law. Hence, the necessity for a thorough discussion and complete acquiescence by the whole court, not only on the decision arrived at, but on the several stages and steps of argument by which it is reached, before it is proclaimed to the world as the authoritative judgment of the bench. In establishing these two rules in the deliberations of the Supreme Court of Texas—the right and duty of dissent in proper cases, and the approval by the whole court of all opinions handed down—Judge Roberts contributed vastly to the authority, strength, and harmonious efficiency of that body.

It is useless here to attempt to recite the valuable expositions of the law which are contained in his many opinions from the highest tribunal of the State. His first reported decision is in the case of *Hart vs. Weatherford*, 19 Texas Reports, 57, and the last was in the case of *Overton vs. Terry*, 49 Texas Reports, 773, the latter being a

dissenting opinion in regard to practice on writ of error in the Supreme Court. The first of these cases was decided in 1857, and the last in 1878. Between these two dates lies a vast and vital period of judicial development and legal learning, to the annals of which his deep thought and indefatigable industry contributed nobly and permanently. We may simply notice as milestones on the way of his labor and zeal, the exposition of the "rule in Shelley's case"¹—that *pons asinorum* of technical lawyers—which has been accepted and followed by very many able courts; his masterly analysis of the law of legal *malice*, and the distinction between the degrees of murder, ² which has become a world-wide authority; his explanation of the scope and meaning of the law of eminent domain; ³ his splendid discussion of the functions and application of *mandamus* in the control of a State officer;⁴ his last great opinion in the case of *Guilford vs. Love*,⁵ covering the whole realm of probate law, and the process of administration under a will in Texas; and last, but not least, his system of rules for practice and pleading in the courts of Texas, which has remained the code of Texas practice in the trial of causes in this State, and is approved by the experience of both bench and bar.

After his elevation to the Supreme bench, events rapidly culminated in conditions that for the time suspended the calm and cloistered deliberations of the court and the consultation room. The new court, with Wheeler at its head, and Roberts and Bell as his associates, was hardly seated before the sounds of approaching tumult and disunion shook alike bench, bar, and populace. The campaign of 1857, between Houston and Runnels, for Governor, had been one of unprecedented vigor and acrimony, resulting in the defeat of General Houston by a large majority. Meanwhile, the continued aggressions of the abolition faction in the North, the open defiance of the Statutes of the United States, in the violation of the fugitive slave law, the violent denunciation of the Supreme Court for its decision in the *Dred Scott case*, the increasing

¹*Hancock vs. Butler*, 21 Texas, 804.

²*McCoy vs. State*, 25 Texas, 33.

³22 Texas, 504.

⁴40 Texas, 647.

⁵49 Texas, 715.

bitterness and boldness of unconstitutional methods in Congress, and throughout the whole northern section of the Union, with corresponding alarm, agitation and counter-aggressiveness in the South, brought matters to the last limit of peaceful discussion, and prepared the country for warlike measures. The fatal mistake of the Democratic leaders in Texas, aided by his own magnificent and masterful personality, enabled General Houston, in the campaign of 1859, to reverse the popular verdict of two years before, and he was elected governor, as the representative of the Union Democrats and the *quasi-Republican* element in this State. He was a Texan and loved Texas with a consuming devotion; but he had been a lover of the Union first; he had learned his lesson of fidelity from Andrew Jackson, with whom loyalty to the Union approached fanaticism; he had labored long and ably to place the Lone Star on the field of the flag of his youth, and he longed with heroic hope to behold it still blazing there as his old age tottered to the grave. Therefore, he set his face like flint against Secession and all its belongings. But there were other men, equally as patriotic and loyal to the Union, as the fathers framed it, who saw the inevitable, and prepared to meet it firmly and bravely, and back of all were the people—Southern to the core, and ready to do battle for the institutions of their domestic fabric and for the constitutional autonomy of their State.

In this period of approaching revolution, Austin was the seat of the greatest activity, and, strange to say, the sedate and conservative circle of the Supreme Court was the storm center. Chief Justice Wheeler was singularly sensitive to any suggestion of judicial impropriety, and was violently opposed to political utterances by any member of the court. But those were times when men forgot, or relegated to disuse, the ordinary restraints of custom. The disruption of the Democratic party at Baltimore and Charleston, and the election of Abraham Lincoln on a platform avowedly hostile to the South, had demonstrated the nearness of actual disunion. At a great Union meeting in Austin, in November, 1860, calls were made upon the judges of the Supreme Court for an expression of opinion on the pending crisis, and Judge Bell announced that he would speak in Representative Hall one week from that date. He was known to be an ardent Union man, an accomplished orator, and a profound lawyer. Judge Roberts at once

proclaimed that he would reply at the same time and place. The speaking took place, and it was typical of the earnestness and vigor of men's convictions at that stirring period. A few extracts from Judge Roberts' address may serve to show the directness and fervor of his method of dealing with the subject. He said, in conclusion: "What shall Texas do? As one of her citizens, I am for State action—action by the constituted authorities of the State—action singly and conjointly with other Southern States, until we are made secure in our rights, liberties, and honors. Our allegiance is due to both the State and Federal governments, because the sovereign power of Texas, at the time of our annexation to the general government, so ordained it. And until the same sovereign power shall be brought into action, and declares a different will, it is our duty, as citizens, to make ourselves subservient to the one as well as the other. * * * In all these stages of State action, too great solicitude can not be felt by all parties, to preserve the social order; so that, if the Federal government should fail to recognize the right of the State to exercise its reserved power of changing its form of government, and should endeavor to subjugate it, the energies of the people may be united to repel invasion. Which one of these remedies may be adopted is for the people to say, when they shall have found the means of expressing their will. It is my purpose now to show that the present attitude of public affairs justifies them in adopting either of the remedies that they may think necessary for their safety. I have no fear that inconsiderate rashness will control them. They have pondered upon the issues of this crisis long and well. They have made up their minds. There is no agrarian spirit abroad in this country. There is no war of classes. There is no conflict between labor and capital. Our people are not seeking or asking to extort favors from the government to themselves, or to deprive others of any right. They have no desire for a social rupture at home. Their excitement arises from an entirely opposite cause—a high resolve now to throw themselves in the breach; not to destroy, but to protect rights; not to destroy property, but to protect property; not to destroy life, but to make life worth having; not to produce discord, but to end it. This excitement is not a shallow, noisy ripple, but a deep, irresistible current, springing from the firmest convictions of the mind."

That debate was the turning point in public action in Texas. It was exhaustive, eloquent, patriotic, and, by reason of the character and station of the debaters, it was decisive. The Secession advocates determined to act promptly and vigorously, and Judge Roberts assumed and held the leading part in all that followed. He drew up the call for a convention of the people, assisted in conducting the campaign for that purpose, was chosen president of the convention, and in the delicate and difficult tactics required to out-general Governor Houston, his shrewdness, firmness, and political sagacity were eminently exhibited. It is a fact not generally known, that he might have been one of the delegates to the Provisional Government of the Confederate States, at Montgomery, Ala., and no doubt a member or senator in the permanent government; but he declined, saying that it would require no small effort to counteract Governor Houston's powerful opposition at home, and that he preferred that task. How he managed the maneuver and achieved his purpose, is one of the most curious and thrilling episodes in the political history of the State.

An incident in connection with the Convention of 1861 illustrates his democratic spirit and his high sense of liberality and justice. In the Constitution of the Republic of Texas, copied into that of the State of 1845, it was provided that "no minister of the gospel or priest of any denomination whatever" should be eligible to the office of chief executive of the government or to membership in the legislative body. When the Convention of 1861 came to revise the State Constitution for the purpose of entering the Confederate States, Judge Roberts, the President of the body, suggested that the discrimination against preachers be stricken out, which was done.

When war was finally inaugurated and had proceeded to a stage demanding the utmost resources of the South, Judge Roberts, in 1862, resigned his seat on the bench, raised a regiment himself (the Eleventh Texas Infantry), and led it to the battlefields of the Confederacy. It is gratifying to know that the last regular work he ever did was to write a history of the operations and services of the Texas troops in the armies of the Civil War, which is now in press, as part of a series of such histories covering the whole field of Southern military service during that period.

In 1864, while still in the army, he was elected Chief Justice of the Supreme Court, and the war being manifestly near its close, he came home and assumed once more the judicial station. This interval of warlike experience is made the occasion for a sarcastic reference by George W. Paschal, Reporter of the Supreme Court, and a violent Union partisan, in the preface to Volume 28 of the Texas Reports, where it is said: "The Chief Justice and one of the judges upon the bench, whose constitutional views had hitherto been reliable, entered heartily into the secession movement. The position of one of them (Oran M. Roberts) and the political tendency of his mind made him a zealous leader. Indeed, he became the president of the secession convention, and the chairman of the committee of public safety. In this he but followed his early training and the school to which he had attached himself. Perhaps it was due to his acts (for inconsistency has no boundaries) to meet the full consequences of his political leadership. At any rate, he doffed the judicial robes and girded on a broad-sword. He went forth to the battlefield. Whether or not he won military laurels equal to his judicial record, it is needless to say. Suffice it, that he returned to the Chief Justiceship of the court in 1864." The same spirit of petty spite and rancor led the same reporter to omit to publish a number of very important decisions rendered by the court during the period of the war.

It may be remarked in this connection that at the time Secession was agitated and accomplished very many of the ablest public men in Texas were staunch Union men, especially among the early leaders and in the Southern section of the State. These men naturally antagonized Judge Roberts in his active and prominent part in the Secession movement; and it is a fact that whatever disparagement or want of appreciation his great abilities and public service have at any time or in any degree sustained—and it has not been appreciable—has emanated from that class of traditional critics and jaundiced opponents.

When the State government was organized under the methods of presidential reconstruction, in 1866, he was elected United States Senator, defeating B. H. Epperson, and his colleague was the venerable David G. Burnet, ex-president of the provisional government of the Republic in 1836, who defeated John Hancock. The senators and representatives from Texas went to Washington

and remained there several months, seeking admission to their seats in Congress, but in vain. Texas was the last of the Southern States to be reconstructed according to President Johnson's plans, and by the time she sought recognition at Washington the radical Republicans, led by Wade, Sumner, Stevens, Grow, and Colfax, were determined to inaugurate a system of military reconstruction under Congressional control. While the Texas delegation were waiting to be accepted, Senator Roberts drew up an "Address to the People of the United States," which was signed by the delegation and published in the *National Intelligencer*, attracting wide and favorable attention at Washington and throughout the country. It was the only paper of the kind promulgated by any Southern State, and as an impartial statement of facts, with a profound exposition of the constitutional rights and attitude of the lately seceded States, it produced a marked impression in official circles.

When the State government was overthrown by military order, in 1867, our people submitted to the horrors of congressional reconstruction for the Biblical period of probation, and ex-Judge, ex-Senator Roberts retired to private life. He at once began the practice of law, which was of course precarious under existing conditions, and conducted a small law school at Gilmer. This quiet and uneventful period of his life was in many ways the most pleasant, as it was certainly a very useful part of his career. He taught the principles of the science he loved and thoroughly understood to a select class of earnest, ambitious youths, whose subsequent success they always justly ascribed to his tutorship and influence. Some of them have risen to great distinction in law and politics. One was a Supreme Judge, one was attorney general, another became United States Senator, and they have all been men of worth, weight, and usefulness in life.

After seven years of sacrificial suffering at the hands of "carpet-bag" and "scalawag" rule, Texas finally secured a restoration of her constitutional sovereignty as a State in the Union, in 1874, and her leading sons resumed their headship of affairs. Under the Constitution of 1869, the judges of the Supreme Court were five in number and appointed by the Governor to hold for nine years. But in order to get rid of the famous (or infamous) "semicolon court" appointed by Governor Davis in 1870, a constitutional

amendment was adopted at the State election in 1873, by which a new court was required to be appointed, still composed of five judges and holding for nine years. Governor Coke, on taking his seat in 1874, appointed O. M. Roberts Chief Justice, and Judges Moore, Reeves, Devine, and Ballinger associate justices. Judge Ballinger resigned in a few days and Judge Devine a year later, Peter W. Gray and John Ireland being appointed to succeed them. Under the Constitution of 1876, the court was again made elective, the judges reduced to three, and the term of office to six years. Under this Roberts was elected Chief Justice, and Moore and Gould associates. Judge Roberts remained Chief Justice until the memorable State Democratic Convention of 1878, when Throckmorton, Hubbard, and Lang "locked" the convention for a week, rendering a compromise imperative. A "commission" or conference committee of thirty-two members was selected to choose a candidate for Governor, and they named O. M. Roberts, then absent at his home in Tyler. He accepted and was elected at the ensuing election, and was re-elected in 1880.

In entering upon his service as the highest executive officer of the State, his equipment was not exactly such as ordinarily insures success and satisfaction. Lawyers and judges are not usually efficient business men in any line. Still less are they generally careful financiers or practical administrators of affairs. But in these respects Governor Roberts proved himself an exceptional success. He was from the start a shrewd political economist, a sagacious statesman in the department of governmental finances, and a broad, liberal manager of every interest of public concern committed to his care and encouragement. He was fond of calling attention to the fact that the secret of satisfactory executive service in the management of a government consists in the correct solution of the financial problem. He often emphasized the point that the Premier of England is usually the first lord of the treasury, and that in the United States the secretary of the treasury has come to be the most important officer in the Cabinet. On these lines he shaped his policy and practice, announced the motto, "Pay as you go," and through good and evil report adhered to his plans of rigid economy, provident taxation, liberal but exact appropriations to public purposes, and the utilization of every source of legitimate revenue and every inducement towards building up the State's population, in-

telligence and wealth. He was fortunate, in that his two administrations fell on peaceful and prosperous times. The details of the multifarious interests that were fostered by his management would stretch beyond the limits of an address like this. The chief results of his labors as Governor were the contract for building the new granite capitol, by which the State disposed of unmarketable lands in exchange for a superb public edifice valued at a million and half dollars; the complete reorganization of the whole educational system, including the inauguration of the State University, the foundation of an efficient system of normal colleges, and the thorough reformation of our free public schools; the radical improvement of our prison establishments, with the erection of an additional penitentiary; the building of another insane asylum, and the extension of all the institutions of public charity; a land policy by which, for the first time, the unsalable school lands of the West were put on the market and actual settlement by private ownership was promoted; and a general financial policy under which, at the end of his second term, the public debt had been reduced \$1,400,000, taxes lowered from fifty to thirty cents on the one hundred dollars, taxable values raised from \$280,000,000 to \$410,000,000, the permanent school fund increased from \$1,629,000 to \$5,361,000, and there was a cash balance in the treasury, to the account of general revenue, of over two million dollars.

These figures and facts speak for themselves. Although Governor Roberts was an old-fashioned Democrat, with many strong and pragmatical notions upon social and political questions, it was a distinguishing trait of his public views and conduct that he accepted existing conditions and accommodated his official acts to the progressive spirit of the age and country in which he lived. He was not an ideologist nor a *doctrinaire*. Neither did he belong to the age of ox-carts, or alarm himself with needless fears that "foreigners would some day elbow our children into the sea." He was a plain, practical, provident, business-like governor, whose judicial learning strengthened and adorned his political sagacity.

On his retirement from the executive chair in 1883, he was shortly elected Professor of Law in the State University, which position he held until 1892. It is needless to speak of his labors in these halls. They are reflected in the proficient training, and attested by the enduring gratitude of hundreds of aspiring young

men all over Texas, who will continue to revere him as "philosopher, friend, and guide."

He resigned his professorship to retire to a quiet repose and a scholarly review of his long and active life, residing first at Marble Falls, and later at Austin. His last years were as honorably and beneficially bestowed as any of those that went before. He did what so few of our great men have the thoughtful patriotism and the conscientious industry to perform—he collected the memorials of his fifty years of public service, revised the recollections of the many and momentous scenes in which he had mingled, verified the facts of the annals of his past career, and wrote for posterity, "The Legislative, Political, and Judicial History of Texas, from 1845 to 1895"—a work that is a monument of patience, patriotism, historical accuracy, and exhaustive presentation of the whole story of Texan Statehood for the first half century of its development. It forms the first part of Volume 2 of "The Comprehensive History of Texas," recently published, and when its merits are generally known, it will be regarded as indispensable to the completeness of every educated Texan's library. His latest work, as I have said, was his history of the Texas troops in the Civil War, not yet published.

One singular and striking feature of Governor Roberts' mental composition, was his fondness for scientific and philosophical studies. In the intervals of his busy professional and official life, he wrote a great many interesting and valuable articles upon such subjects. He was a remarkably observant man, noting with reflective intelligence the minutest details of the social and physical world around him, and drawing therefrom many curious and instructive ideas and theories.

Contemplating his whole life and services, I do not hesitate to declare that in all the departments of public, professional, and private labor, he was the most versatile and the most useful man Texas has produced in the fifty years of her existence as an American State. Others were pre-eminent in this or that direction; he was great and useful in all. As lawyer, jurist, statesman, soldier, teacher, and historian, the "Old Alcalde" has no rival in the annals of Texan worthies.

It has been said that "genius can mould no marble so speaking as the spot where a brave man stood or the scene where he labored." We stand today on the spot where he was wont to take his place

among those who lived and labored for this great commonwealth and its permanent happiness. All around us are the scenes in which he wrought out the manifold purposes of a life devoted to the lofty ideals of jurisprudence, statecraft, and education. On yonder hill, the splendid fabric and colossal beauty of a capitol, reared by his provident and practical care, enshrines the memories of his patriotism and typifies the enduring usefulness of his career. In these walls we may hear even yet the echoes of his footsteps and recall the sound of his voice, raised so often in behalf of youth, and its noblest aspirations. These physical and tangible monuments, and memorials of his great mind and heart, bring welcome messages of his well-spent days; but the abiding tribute to his fame and influence is written in the table of laws he illumined by his learning, in the institutions of social life perfected by his patient skill, in the grateful remembrance of the people he served so faithfully and loved so well, and in the splendid prowess of the State whose grandeur was the dream of his youth, the purpose of his manhood, and the pride of his old age.

THE OLD FORT AT ANAHUAC.

ADÈLE B. LOOSCAN.

On the shore of Galveston Bay, near the mouth of the Trinity River, and about half a mile south of the town of Anahuac, are to be seen the ruins of an old Mexican fort, erected in 1832. Its walls have long since been levelled to the ground, many of the bricks used in their construction have been utilized in various ways, but the outlines of its foundation may still be traced, and with the aid of the recollection of descendants of early settlers, whose childhood was passed near it, its site may be accurately located. Its history is that of the rebellion of Texan colonists against Mexican oppression, of their punishment by imprisonment within its walls, which were put up by the forced labor of colonial mechanics. The half-buried bricks of this ruin, which, according to primitive custom, were moulded by hand, are endued with a new interest, when we know Texan prisoners were made to contribute their labor by tramping the clay, as well as moulding the bricks for the walls of the fort.

In 1832, when the troubles between the citizens and Col. Juan Davis Bradburn first began, the latter was poorly equipped to take care of political prisoners, so Patrick C. Jack and Wm. B. Travis, the first who were arrested for expressing themselves too freely in regard to his arbitrary conduct, were imprisoned in a house contiguous to his own quarters.

Dr. N. D. Labadie, who had been living at Anahuac since March 2nd, 1831, relates the following particulars in regard to the building of the brick fort. He says, that the wants of Jack and Travis while in prison were attended by one of the slaves of James Morgan; that in a bundle of clothing, prepared by the prisoners for the laundress, a letter marked O. P. Q., requesting that "a horse should be in readiness at a certain hour on Thursday night," was found by the Mexican officer of the day. "The finding of this letter," says Dr. Labadie, "caused Bradburn much uneasiness, and, combined with other events, determined him to secure his prison-

ers more effectually. As he was laying the foundation of a fort near Anahuac, a large brick kiln had just been emptied, and all the masons and carpenters were forced to go down and put it up for a prison. In the course of a week the work was completed, and two large cannons placed on a platform near by. The two prisoners were now to be conducted to the new prison. The whole garrison was put under arms. The cavalry made a display at the head of a column. The letter to O. P. Q. had caused a double line of sentry to be placed inside with the prisoners, who were thus doubly guarded in order to be kept safe till the whole force of the garrison was ordered out to conduct the prisoners to the new place of confinement." In another part of the same narrative it is recorded that, some ten or fifteen men who were taken prisoners by the Mexicans in one of the skirmishes between the latter and the citizens, during those troubles, were put to hard labor, tramping clay and moulding it into bricks. Thus, not only was the old fort built by the compulsory labor of colonial carpenters and masons, but its very bricks were made and moulded by the feet and hands of prisoners taken while fighting in defense of their liberties.

But this state of things could not continue long, and the determined action of the citizen soldiery at that time, no doubt, had a powerful influence in shaping the conciliatory policy which prevailed during the ensuing year. In the fall of 1832 Colonel Souverein, who had succeeded Bradburn in command of the garrison, chartered two schooners from Wm. and David Harris and with the garrison sailed for Tampico. However, the evacuation of the fort was temporary, for, on May 30th, Stephen F. Austin wrote from Matamoras, that, "Mr. George Fisher will leave here shortly to enter upon the duties of Collector of Galveston, with only a sufficient number of troops for necessary guards." * * *

Anahuac was known as the Port of Galveston, and here the revenue officer had his official station, but history is silent with regard to the official acts of George Fisher, and it was not until June, 1835, that little Anahuac again became the scene of resistance to oppression; this time, Wm. B. Travis and Patrick Jack, the former prisoners, performed the part of "rescuers of the imprisoned." The story is best told by letters of actors which explain and correct certain erroneous statements in historical records.

The following is a copy of a letter from D. W. C. Harris, of Harrisburg, Texas, to relatives and friends in Waterloo, New York:

HARRISBURG, TEXAS, August 17, 1835.

Dear Friends—On the 10th of June I went to Anahuac (about fifty miles from Harrisburg) to purchase some goods of a Mr. Briscoe; after purchasing my goods, I was informed that I could not remove them from town, until I got a gefe from the custom house; this I was determined not to do, if I could avoid it. The evening previous to my intended departure there were several guards placed around Mr. Briscoe's store, to see that nothing was removed. About eight o'clock a young man came to the store and asked Briscoe for a box to put ballast in; this Mr. Briscoe gave him, and he placed it on a wheelbarrow filled with brick and started for the beach; after he left the store I observed to Mr. Briscoe that we could now ascertain whether my goods would be stopped or not. Shortly after, we heard the young man calling for Mr. Smith, the interpreter. Mr. Briscoe and I then walked up to the young man, and found that he had been stopped by the guard. Mr. Smith soon came up and informed the guard of the contents of the box; this appeared to satisfy him, and the box was taken to the beach, Mr. Briscoe and I going with the young man. After the box was put in the boat and we were about returning, ten or twelve Mexican soldiers came on us and ordered us to stand. Mr. Briscoe and I were taken prisoners. As we were ascending the bank a young man named Wm. Smith came down the hill, and when within ten feet of us was shot down, the ball passing through the right breast; (he is recovering). Mr. Briscoe and I were then put in the calaboose, where I remained until next day at 11 o'clock, when I was liberated, Briscoe still being detained. I immediately came to Harrisburg and made statements of the facts, which were sent to San Felipe, and on the 24th of June an order came from San Felipe for the Mexicans to be disarmed, which was done on the 27th. * * *

CLINTON.

Further particulars with regard to the order, which came from San Felipe, "for the Mexicans at Anahuac to be disarmed," so briefly alluded to by De Witt Clinton Harris, are as follows: A company of about twenty men met at Harrisburg, elected Wm. B. Travis captain, mounted a six-pound cannon on truck wheels used for hauling logs to the saw mill, put it on board the sloop "Ohio," and proceeded to Anahuac, where they landed and captured the garrison of forty Mexicans, under command of Capt. Tenorio. The following is a list of a few of the men who went on this unique

naval expedition: P. C. Jack, D. and S. Harris, Jno. Iiams, Jno. Brock, Capt. Hunnings, E. Ray, J. Wilcox, Jr., and H. Callahan. A. B. Dodson, whose bride, a few months afterward, made the first Lone Star flag of Texas, and presented it to a company of which he was first lieutenant, went as far as Vince's, a few miles below Harrisburg, where he was detained on important business.

Important facts relating to the same affair are contained in the following letter from Travis to Henry Smith, who soon afterwards became Provisional Governor of Texas:

SAN FELIPE, July 6, 1835.

My Dear Sir—I hasten to write you a line by Mr. W. M. Smith, who is on hand to start for Columbia.

I have only time to say that I returned last evening from a successful expedition to Anahuac. On the 21st ultimo resolutions were adopted here recommending that, in connection with the general defence of the country against military sway, the troops of Anahuac should be disarmed and ordered to leave Texas. In addition to that, I had been invited to go to Anahuac for the above purpose by several of my friends, who are the principal citizens of that place, and who were suffering under the despotic rule of the military.

Under these circumstances, I set out for Galveston Bay, raised a volunteer company of twenty men on Buffalo Bayou and San Jacinto, and being elected captain of the company, I proceeded to Anahuac in the sloop "Ohio," with a six-pounder mounted on board. We landed on the 29th, took possession of the place, and commenced active offensive operations. On the morning of the 30th the troops, about forty in number, capitulated, delivered us sixty-four stands of arms (muskets and bayonets), and agreed to leave Texas immediately under parole, never to serve against the people of Texas. I sent them bag and baggage on board the sloop, and they are now on the march without arms to La Bahia.

This act has been done with the most patriotic motives, and I hope you and my fellow citizens generally will approve it or excuse it. * * *

As ever, your friend,

TRAVIS.

This decisive action in disarming Mexican soldiers made plain the determination of Texans to no longer submit quietly to tyranny, and the part borne by Travis in the affair presaged the unrivalled heroism of his character. He was a warm friend of Andrew Briscoe, and when informed that "his friends were suffering

under the despotic rule of the military," friendship united with patriotism in emphasizing the ardor of his feelings. Nevertheless, public sentiment was by no means unanimous in approving the act, and Travis was sharply attacked by what was known at the time as the Peace Party or Submission Men. In a letter dated August 5, 1835, he alludes to a document or card published through the solicitations of friends, which probably entered into an explanation of his course, and which he seems to have regretted. In the same letter he says: "I know that I acted by the consent and approbation of the political authorities, I know that the people here all favored the measure, and I went into it believing it to be right and that it would meet the approbation of all; and, as you say, time can only determine whether it was a good or bad measure. * * * Conscious that I have not intentionally erred, I bid defiance to any who may be disposed to persecute me, and feel assured that I have numerous friends to sustain me in it." * * *

The following letter from Wm. B. Travis to Andrew Briscoe, for whose release he had suffered much blame at the hands of the Peace Party, shows the confidential relations existing between them. His allusion to Mr. Briscoe's publication, which was probably one of those circulars printed with the pen and posted up in public places for the purpose of arousing the people, shows that they were one in patriotic sentiment, and that neither faltered in the performance of duty. The letter also shows the happy change in public sentiment which had been wrought in the space of a few weeks, as well as the excited condition of the country.

SAN FELIPE, August 31, 1835.

My Dear Sir—I have not written to you before, because I was ashamed to tell what was going on. It is different now. Although the Mexican or Tory party made a tremendous effort to put us down, principle has triumphed over prejudice, passion, cowardice, and knavery. All their measures have recoiled upon them, and they are routed horse and foot. The extent of their glory was to denounce us to the military at San Antonio and Matamoras, and demand our arrest. An order was accordingly issued to Ugartachea, and repeated by Cos, to arrest seven of us and send us to Bexar to be tried by martial law. This was too much for the people to bear. When they were called on by an usurping political chief to carry these orders into execution, the sacrifice was too great. Their wrath was turned against the Tories and Spanish-Americans, who now dare not hold up their heads. The people call

now loudly for a convention, in which their voice shall be heard. They have become almost completely united. And now let *Tories*, *submission men*, and Spanish invaders look out.

There is to be a great meeting here on the 12th of September, on the subject of a convention. The Tories are dying a violent death, and their last expiring struggle will be made on that day. Therefore I invite you to attend, and hope you will do so. We wish to beat them in their stronghold, and I have no doubt we shall do so. But I wish to see them overwhelmed. I have seen your publication. It does you credit. You have shown yourself the real white man and uncompromising patriot. Stick to the text and Texas is saved.

I have this moment finished conversing with a Mexican just from San Antonio. He says marching orders have been given to the troops. They are to be here by the 12th or 15th of September to garrison this town, Tenoxtitlan, and Nacogdoches with 200 men each; and it is concerted that 200 men shall arrive by water at Anahuac at about the same time to garrison that place. They have sworn vengeance against all engaged in the late expedition, and in that of 1832 at Anahuac and Velasco. They calculate to take up these men, with the aid of the other Americans, by which time they will gradually bring in troops enough to overrun the people and keep them in vile submission. They can not do it. We will not submit to be garrisoned here. I hope you will not there. We shall give them hell if they come here. Keep a bright look out to sea. Allow no pilots in the bay to assist them, and they can not land before you have time to prepare for them. Secure all the powder and lead. Remember that war is not to be waged without means. Let us be men and Texas will triumph. I know you can be relied on; therefore I exhort you to be active in preparing the minds of men for the scenes that are to be enacted.

News from Orleans that we will be liberally aided with men, money and arms has arrived. Already we have five pieces of cannon, 100 kegs of powder, and lead and shot to correspond, landed in Matagorda, and sent from Orleans.

Come over if you can on the 12th. My respects to Wilcox and others. Please write soon.

Your friend,

W. B. TRAVIS.

In spite of the proclamations of Capt. Thomas M. Thompson, who, from the Mexican war schooner "Correo," assumed a petty jurisdiction over Galveston Bay and the citizens of Anahuac, forbidding the organization of militia, and insolently threatening to hang Travis at his yard arm in half an hour after he should be captured, Mexican rule at Anahuac could never be reinstated; the

little sloop "Ohio" and its heroic crew had done their work effectually; the fort was never again to know the tread of a Mexican garrison, nor its prison doors to close upon another political prisoner.

Guided by the old letters to which attention has been invited, I have been able to obtain authentic data in regard to this old Texas landmark.

The Wilcox mentioned in the letter of Travis to Andrew Briscoe was Capt. Chas. Wilcox, who settled in Anahuac in 1831, was present when the corner stone of the fort was laid, and lived there continuously up to the time of his death. From one of his sons, Geo. E. Wilcox, resident at Temple, the following description of the old fort was obtained:

"My earliest recollection of the Mexican fort at Anahuac is after the walls had been torn down to a level with the top of the hill or bank of the bay shore on which it was built.

"The fort was about 30x40 feet in the clear, built with the western side fronting and immediately on the bank. The bank had been excavated for a distance of ten feet, with the side next to the bay entirely open. This opening was closed up with heavy walls of brick and lighter brick walls were built around the other three sides, and from the rear or eastern side of the fort there were two passageways underground, leading back to a large magazine some forty yards back on the hill, under the surface, which passage could be used as an exit from the fort.

"On the exposed part of the fort there was a brick wall about four feet thick. In the corner stone, among other things, there is a Mexican dollar. My father saw the corner stone laid. * * * There were only two cannon in the fort; they were about six-pound iron guns. One of them can be seen at Anahuac today."

Unfortunately, the rumor that money was buried in or near the fort has caused the ground to be dug up by treasure hunters, and in this way its otherwise clear outlines have been defaced.

A Confederate fort, called Fort Chambers, was built during the Civil War about half way between the Mexican fort and Anahuac, opposite Brown's Flats. Two cannon are said to have been mounted there, but they were afterwards conveyed to Galveston and placed at the corners in front of Artillery Hall.

There is no doubt about the cannon now in the possession of W. D. Wilcox at Anahuac having been left there by the Mexicans.

References:

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Letters of D. W. C. Harris, Wm. B. Travis, A. B. Dodson, and Geo. E. Wilcox.

SKETCH OF THE DEVELOPMENT OF THE JUDICIAL
SYSTEM OF TEXAS. I.

JOHN C. TOWNES.

[These articles embody the substance of several lectures given in the Pleading and Practice Course in the Law Department of the University of Texas. They have been condensed and arranged for publication at the request of parties interested in the subject and in THE QUARTERLY. To the lawyer and the student of governmental institutions the collection and citation of authorities, it is hoped, will be valuable. If they shall stimulate in any degree a desire to study Texas institutions in the light of her own history, the purpose of their publication will have been attained.—J. C. T.]

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The jurisprudence of Texas is in many respects different from that of any other country. It is a resultant of the combined forces of the Civil and Common law. For centuries these two great systems of jurisprudence have controlled the governments of Southern and Western Europe, the Civil law having its sway over the Latin, and the Common law, over the Anglo-Saxon and kindred peoples. In connection with them in their several jurisdictions has grown up the splendid civilization of Europe. As these several European nations established their colonies in the New World each colony brought with it the traditions, habits, and character of its parent state; and these influences of the Old World determined, to a large extent, the character of the several social and governmental institutions of the New.

England was a Common law country, and in all her colonies, that system was the base of colonial jurisprudence. Spain held most rigidly to the ancient Roman or Civil law and that system was the base of the jurisprudence of all her American dependencies. Neither system could be transplanted intact. The natural and social conditions in the two hemispheres were too different, and each code of laws received characteristic modifications, first by those in authority in Europe, and subsequently by the colonists and their descendants. The respective characteristics of the Eng-

lish and Spanish peoples manifested themselves here and the changes in the English Common law by the Anglo-Americans were much greater and more fundamental than those wrought by the Spanish-Americans in the Spanish Civil law.

Texas furnished a meeting place and battle ground for these two peoples and their institutions. The Spanish-American and the Spanish Civil law were in possession of the territory. The invasion was by the Anglo-American and the Common law. Between the peoples, the struggle was sharp, short, and decisive. The Anglo-American was victorious. Between the systems of jurisprudence, the contest was protracted and the result a compromise. The Common law ultimately prevailed, but its victory involved the loss of some of its most cherished doctrines.

The founders of the government of Texas were free to choose the materials for their structure from whence they would. Their sympathies were with the Common law, but the Civil law had been in force; and marital relations, land titles, and other rights permanent in their nature had grown up under it. Sudden and radical changes would have been prejudicial, if not impracticable, and the Texans, in their wisdom, declined to disturb too violently existing institutions. On the contrary, they adopted many of the Civil law doctrines, modifying them to suit their purposes and conditions, and retained them as part of the permanent jurisprudence of the country.

Thus it will be seen that our Texas law rests upon the Common law of England, as adapted to American conditions by the several States of the Union prior to the Texas Revolution and upon the ancient Roman law, as modified in its transmission through Spain and her American dependencies, and is formed, to a large extent, from selections from each. In most instances, these selections were wisely made and the result is a blending in one homogeneous whole of much that is best in each of the two great sources from which the material was taken.

The peculiarities of the system thus established embrace matters both of substantive and adjective law. The most interesting relate to the first of these divisions—the law regulating substantive rights; but these are apart from our present purpose, which concerns only so much of the adjective law—or law of procedure—as is involved in the development of the judicial system.

This development may be conveniently, though somewhat arbitrarily, divided into two periods—the first extending from the establishment of the Mexican Republic in 1824, to the annexation of Texas to the United States, in 1845; the second extending from annexation to the present time. The first of these periods we may designate as the formative, and the second as the modifying.

A court may be broadly, though somewhat technically, defined as an agency created by the sovereign to determine rights and apply the sanctions of the law to individual conduct. The aggregate of such agencies, with their co-ordinated powers, existing in any government, constitutes the judicial system of that government. The character of this system depends upon the kind and number of these agencies; and these, in turn, depend largely, though not entirely, upon four considerations: first, the conception held by the sovereign of the purposes to be accomplished by these agencies and the power necessary to be conferred upon them; second, the basis of the distribution of this power among the several agencies; third, the number and kind of officers who are to represent or constitute such agencies; and, fourth, the methods of procedure in such agencies. Other elements enter in but these are the most potent. It would be tedious to attempt to trace the changes in these several regards in the development of our system and no effort will be made to do so. Still it will be well to bear these thoughts in mind as we consider the subject.

At the beginning of this century, Texas was an undeveloped Spanish province, inhabited almost exclusively by Indians and Mexicans. Soon thereafter, a few emigrants from the United States settled within her borders. At first, they were without influence, but as time passed and their numbers increased, they grew in importance and strength until, in 1836, they were powerful enough to successfully resist the military despotism of Santa Anna and establish an independent nation. For approximately ten years this national existence was maintained, and then the Republic of Texas voluntarily became one of the United States of America.

During this period, the history of Texas is one of intense interest and great suggestiveness. Probably the life of no other people shows such rapid advancement, or, in the same length of time,

furnishes such opportunity for studying social and political growth.

As stated above, prior to the revolution in Mexico, the Roman Civil law, with its various Spanish modifications, was in force in all the dependencies of Spain in the North American continent. The change of government wrought by the revolution necessitated material changes in its jurisprudence; still this Civil law remained as its base. After the overthrow of the usurper Iturbide, the Mexican congress reassembled and adopted the "Constitutive Act of Federation" as the plan of government for the Mexican nation. This act was promulgated January 31, 1824.

In this federation, Texas was combined with Nuevo Leon and Coahuila, forming the Internal State of the East.¹ This constitutive act denied to the several States the power to adopt permanent constitutions and organize permanent governments until the permanent Federal Constitution should be adopted. In the meantime, the existing State governments were to continue provisionally.² By Decree No. 403, of date May 7, 1824, the Mexican Congress divided the Internal State of the East, separating Nuevo Leon from Coahuila and Texas.³ From this time until the Texas Revolution Coahuila and Texas constituted a State. The first Constituent Congress of Coahuila and Texas met on August 13, 1824, at Saltillo, and by Decree No. 1 declared itself duly installed, and inaugurated the provisional State government.

Section 10 of this Decree is as follows:

"The judicial power shall, for the present, be vested in the authorities by which it is now exercised in the State, and in the administration of justice they shall be governed by the laws in use so far as they are not opposed to the form of government adopted."⁴

This provision continued the former Civil law courts.

The "Constitutive Federal Government" was superseded by the adoption of "the Federal Constitution of the United Mexican States, sanctioned by the General Constitutive Congress, on the 4th of October, 1824." This constitution was intended to be permanent.

¹Art. VII., Constitutive Acts of the Mexican Federation.

²Arts. XXIV. and XXV., Constitutive Acts of the Mexican Federation.

³Legislacion Mexicana, Dublan y Lozano, I., 706.

⁴Laws and Decrees of Coahuila and Texas, p. 4.

It was modeled, to a large extent, on the Constitution of the United States, although the influence of Spanish and Civil law ideas is manifest throughout the instrument. It recognized practically the same division of power between the national and State governments that exists in the Constitution of the United States. The division of the powers of each of these governments into legislative, executive and judicial departments was declared, though the lines of separation are not identical with those obtaining in Common law countries, the most noticeable difference being in regard to the right of construing the constitution and statutes. This power was conferred exclusively on the Congress, and no question as to the meaning of the constitution or a statute, nor the violation of the former by the latter, could be determined by the courts. If such difficulties should arise they were to be called to the attention of Congress and it was to resolve the doubt; on the other hand, Common law courts had for centuries unhesitatingly exercised the power to interpret and construe statutes, and the American Common law courts, from the organization of the Supreme Court of the United States, have repeatedly exercised the power of determining the constitutionality of the acts of Congress and of the State legislatures.

The permanent constitution of the State of Coahuila and Texas was not promulgated until March the 11th, 1827.¹ This instrument clearly shows the influence of the various forces then striving for the mastery. It is neither Civil law nor Common law, but is manifestly a compromise between the spirit of conservatism, holding to the traditions and institutions of the past, and the spirit of innovation, insisting upon the adoption of a government similar to that of the United States of the North.

Under this Constitution, until 1832, the State Congress was to consist of twelve deputies, only two of whom were to be from Texas, the other ten having an exclusively Mexican constituency. The first Congress assembled on July 1, 1827,² and the first Governor was inaugurated on August 1, 1827.³

The judiciary title of this Constitution consists of thirty-four

¹Laws and Decrees of Coahuila and Texas, p. 343.

²*Ibid.*, p. 47.

³*Ibid.*, p. 63.

articles.¹ The system of courts contemplated by it was composed of the inferior tribunals theretofore existing and a Supreme Court to sit at the capital having jurisdiction of appeals from the more important inferior courts throughout the State. In this system of courts was vested all the judicial power. No special tribunals were to be created, and no retroactive laws were to be passed, but all proceedings were to be uniform, according to pre-established rules and to the written constitution. The military was subordinated to the Civil authorities. The courts were forbidden to construe or pass on the validity of any constitutional provision or statute, the determination of all such matter being vested exclusively in Congress. Attempt to arbitrate was made a condition precedent to the right to litigate, except in special cases. No indictments were required in criminal prosecutions. Petty offenses were dealt with summarily without formal trial or right of appeal. In more serious violations of the law, the accused might be arrested and detained for forty-eight hours without formal charges, but if no such charges were made within that time, he was required to be released. Prosecutions and trials were to be public. Confiscation, torture, and compulsion were forbidden; seizures and searches were declared unlawful, except in specified cases, and must then be made in conformity to law.

Article 192 is worthy of reproduction; because it is the first mention of a jury in any law ever in force throughout Texas territory; and also because it indicates the attitude of Congress and the people in reference to this institution. It is as follows: "One of the main objects of attention of Congress shall be to establish the trial by jury in criminal cases, to extend the same gradually, and even to adopt it in Civil cases in proportion as the advantages of this valuable institution become practically known."

The contrast between its doubtful and experimental tone and the vigorous and imperative language of the Anglo-American constitutions on this subject is sharp and clear. The spirit of doubt and indecision expressed in the article dominated those charged with its enforcement, and it was not until April 13, 1834, seven years thereafter, that any active steps were taken by Congress to establish trial by jury. It is true that on page 60 of the Laws and

¹Laws and Decrees of Coahuila and Texas, p. 337.

Decrees of Coahuila and Texas, as published authoritatively in Texas in 1839, appears this title:

“DECREE NO. 39.

“LAW FOR THE REGULATION OF JUSTICE.

Neither text nor date appears. The next preceding decree is dated June 20, 1827, and the next succeeding June 22, 1827. References to this decree in other portions of the laws of Coahuila show it to have been an enactment of some length, evidently designed to meet the conditions in the Mexican portion of the State rather than in Texas.

On April 13, 1834, was passed Decree No. 277, commonly known as the “Chambers Jury Law.” It comprised an hundred and forty articles, extending from page 254 to page 270 of the Laws and Decrees of Coahuila and Texas. It is extremely interesting and instructive, but its length forbids its reproduction. Its title and preamble are as follows:

“DECREE NO. 277.

“The Constitutional Congress of the free, independent and sovereign State of Coahuila and Texas, desirous to provide for the happiness and prosperity of their constituents, and to comply with the obligation imposed upon them by the 192nd article of the constitution, decree the following:

“A plan for the better regulation of the administration of justice in Texas.”

The article of the Constitution referred to is the one quoted above.

This act was to be operative in connection with the constitution, and the courts provided by it were to be subordinate to the Supreme Court. So the Texas system, after its passage, consisted of the Supreme Court of Coahuila and Texas, as created by the Constitution and statutory courts provided for by this act.

These statutory courts consisted of, first, a superior court of Texas, to be presided over by a superior judge, with a circuit com-

prising the whole of Texas, which was divided into three districts, namely, Bexar, Brazos, and Nacogdoches, in each of which the superior judge was to hold court three times each year at designated times and places; second, courts of less jurisdiction, in each municipality, to be held by a primary judge; and, third, still inferior courts in the smaller political sub-divisions. This act was, by its terms, exclusive, and undertook to supplant all courts theretofore existing in Texas. In most cases submitted to them the decisions of the lowest courts were final. The primary courts had no jurisdiction to try criminal cases, except the most trivial misdemeanors; but the primary judges had extensive powers as examining and committing magistrates. In civil matters, however, the jurisdiction of the primary courts was very extensive. They had exclusive original jurisdiction of all suits involving more than ten dollars in value, without regard to the nature of the litigation. The decision in all such cases was final, unless appeal was prosecuted to the superior court. The superior court had exclusive original jurisdiction in all criminal cases, except the smallest misdemeanors, and appellate jurisdiction in all civil cases tried in the primary courts. Appeal lay from all judgments of the superior courts to the Supreme Court of the State.

The procedure in these courts was not regulated by the rules either of the Civil or Common law, but was peculiar to itself. The general provisions regarding juries are important enough to quote:

“Art. 2. All cases, civil and criminal, shall be tried by juries in the manner and form prescribed by this law.”

“Art. 6. For the trial of civil causes, there shall be in every municipality a tribunal for each primary judge, composed of the judge, a subaltern sheriff, and the jury. Their sessions shall be held every two months of the year.

“Art. 7. In all causes, civil and criminal, the jury shall be composed of twelve men, who shall be sworn, and the joint opinion of eight of them shall be considered the decision of the jury.”

“Art. 24. Juries are the judges of all the facts in controversy, and all the laws concerning evidence, subject to the instructions from the judge, but they have the right to differ with him in opinion; but, in regard to all other laws, they shall be regulated strictly according to their literal tenor.

“Art. 25. The facts established by the decision of the jury shall be considered as conclusive, and can not be controverted before any tribunal or authority, except in the single case of the corruption of the jury.”

“Art. 72. The judge shall make such observations upon the evidence and facts adduced on the trial as he may think proper and necessary for the instruction of the jury, who shall retire for deliberation.”

“Art. 74. The verdict of the jury being agreed upon by the number required by law, it shall be committed to writing, expressing all the important circumstances that may have been established by the evidence, and shall be signed by all the jurors. Those, however, who may dissent from the verdict, shall be permitted to express their separate opinion.”

It is readily apparent that the jury contemplated by this act was a very different institution from the Common law jury, or that with which we are now familiar. No provision is made for a grand jury.

The petit jury decided questions of law and fact, both as to the admission of evidence and its legal effect. The verdict could be rendered by eight or more jurors, and the minority could file dissenting opinions. The verdict was conclusive upon the court in which it was returned, and all appellate courts, except in the one case of the corruption of the jury.

There were numerous other differences between the procedure provided for these courts and the practice in the courts with which the Anglo-Americans had been familiar. Probably the most noticeable is the absence of recognition of the Common law distinction between legal and equitable rights and remedies, and the giving to one tribunal jurisdiction of all causes, without regard to that distinction. Another is the requirement of an attempt to arbitrate as a condition precedent to suit; another is the provisions as to pleading. Here the contrast is so great that I quote a few paragraphs, as follows:

“Art. 94. In order to commence an action in writing, the complainant shall present himself before the primary judge of the respective jurisdiction, and shall signify his demand by a petition, plainly and clearly expressed, accompanied by a certificate of having

attempted in vain a conciliation with the opposite party, and without this requisite the demand shall not be admitted."

"Art. 101. Neither of the parties shall be permitted to present more than two writings; and the term of three days shall be allowed for the replica, counted from that of the contestation; and the same time shall be allowed for the duplica, counted from that of the replica; and the judge shall deliver these documents to the parties to whom they may respectively appertain immediately on receiving them."

The superior court contemplated in this act was never organized in any of the three districts, and no session of such court was ever held; hence, this first attempt to establish a Texas judicial system was of little, if any, practical effect. The state of the country was too unsettled to permit of orderly proceedings in any department. The causes which culminated in the Texas revolution were actively at work, and the attention of all parties was filled with other things than private litigation. Theoretically, this law remained in force until the meeting of the Consultation at San Felipe de Austin, on October 15, 1835, and the establishment by it of the provisional government, consisting of a governor, lieutenant governor, and council, who were authorized to administer the affairs of state.

This consultation did not declare nor contemplate national independence for Texas; it strove to accomplish the restoration of the national constitution of 1824. The plan of provisional government agreed upon conferred almost absolute power upon its officers, acting as a council. Among other things, this council was to exercise the power of courts of admiralty and maritime jurisdiction. It was especially required to organize a provisional judiciary.

The three articles relating to the latter, are as follows:

"Art. 5. There shall be constituted a provisional judiciary in each jurisdiction represented, or which may hereafter be represented in this House, to consist of two judges, a first and second, the latter to act only in the absence or inability of the first, and to be nominated by the Council and commissioned by the Governor.

"Art. 6. Every judge, so nominated and commissioned, shall have jurisdiction over all crimes and misdemeanors recognized and known to the Common law of England; he shall have power

to grant writs of 'habeas corpus' in all cases known and practiced to and under the same laws; he shall have power to grant writs of sequestration, attachment, or arrest, in all cases established by the 'Civil Code' and 'Code of Practice' of the State of Louisiana, to be regulated by the forms thereof; shall possess full testamentary powers in all cases; and shall also be made a Court of Records for conveyances which may be made in English, and not on stamped paper; and that the use of stamped paper be, in all cases, dispensed with; and shall be the 'Notary Public' for their respective municipalities; all office fees shall be regulated by the Governor and the Council. All other civil proceedings at law shall be suspended until the Governor and General Council shall otherwise direct. Each municipality shall continue to elect a sheriff, alcalde, and other officers of Ayuntamientos.

"Art. 7. All trials shall be by jury, and in criminal cases the proceedings shall be regulated and conducted upon the principles of the Common law of England; and the penalties prescribed by said law, in case of conviction, shall be inflicted, unless the offender shall be pardoned, or fine remitted; for which purpose a reasonable time shall be allowed to every convict to make application to the Governor and Council."

In these ordinances is the first Texas recognition of the English Common law. By them it was adopted as the law in all *criminal* cases. Judicial functions were, however, suspended in all *civil* matters, except in cases of special emergency, and as to these, the codes of Louisiana—another Civil law country—were adopted. The Council was authorized to order the opening of the courts for the trial of civil cases, if, in its discretion, this should be expedient.

Having elected a Governor and Council, the Consultation committed the government to them, and adjourned on November 14, 1835, to meet on March 1, 1836. The Council organized and took charge of the government. From time to time, judges for the different municipalities were elected and inducted into office. On January 16, 1836, the Council passed an act entitled "An Ordinance and Decree for Opening the Several Courts of Justice, Appointing Clerks, Prosecuting Attorneys, and Defining Their Duties, etc.," which was approved January 22, 1836. This is too long for insertion. Its most important provisions were: first to open the courts for civil as well as criminal business; second, to reiterate

the terms of the executive ordinance, adopting the Common law of England in all criminal matters; third, to specially provide for grand juries; fourth, to continue the authority of the Louisiana codes in the special cases mentioned in the executive ordinances; fifth, to continue in force the former laws of Coahuila and Texas in all other civil matters; sixth, to authorize appeals from the decision of the primary court in any municipality to the like court in any adjoining municipality; and, seventh, to increase the jurisdiction of alcaldes to cases involving as much as fifty dollars.¹ The most striking peculiarity of this plan is the absence of any court of last resort, without which uniformity of decision is unattainable. As the plan, however, was only temporary, this omission was no serious defect.

The Provisional Government, though embarrassed by much internal strife, and the disordered condition of the country, sustained itself against the hostile invasions from Mexico. Difficulties increased, and the Council decided that it was proper that the Convention, which was to assemble on March 1, 1836, should be more thoroughly representative than the adjourned Consultation, and on December 10, 1835, it passed an ordinance providing for an election, to be held throughout the State, on February 1, 1836, to select delegates to such a body, to meet at Washington.² The Governor objected to some of the provisions of this act, and vetoed it, but on the succeeding day it was passed over his opposition.³ The ordinance calling for this election is not set out in the journals of the Council. The preamble to the journal of the Convention gives the date of the passage of the ordinance as December 11, and of its approval by the Governor as December 13. The dates given herein are taken from the journals of the Council. The election for delegates was duly held.

The Convention assembled at Washington on March 1, 1836, and immediately organized. On the next day it adopted the Texas Declaration of Independence, and proclaimed the Republic of Texas a free, sovereign, and independent Nation. In this new nation, the Anglo-American element was overwhelmingly predominant, and its

¹Orders and Decrees of the General Council, p. 135.

²Proceedings of the General Council, p. 101.

³*Ibid.*, p. 112.

traditions, sympathies, and prejudices were all in favor of the Common law. One of the grievances of the people against the Mexican government, as set forth in this Declaration of Independence, is in these words:

“It has failed and refused to secure on a firm basis the right of trial by jury, that palladium of civil liberty, and that only safe guarantee for the life, liberty and prosperity of the citizen.”

It was necessary to form a constitution as a basis of permanent national existence, and as no vote of the people could be taken on it then, or in the near future, and as the provisional State government had been superseded, it was necessary to make provision for a temporary National government. The Convention addressed itself vigorously to these several tasks, and on March 16th adopted an executive ordinance providing for a Government *ad interim*, and on March 17 passed unanimously, and signed the Constitution of the Republic of Texas; and, having elected officers for the temporary government, adjourned without day. As men who could bring things to pass, the members of that Convention stand without peers. The swiftness of their work is equalled only by its quality and effectiveness.

The executive ordinance thus adopted, is as follows:

“WHEREAS, We, the people of Texas, through out delegates, in General Convention assembled, for the purpose of framing a Constitution, and organizing a government under that Constitution, free, sovereign, and independent; and finding from the extreme emergency of the case, and our critical situation, that it is a duty that we owe to our fellow citizens and ourselves, to look upon our present danger with a calmness unruffled and a determination unsubdued; and at the same time to pursue a prompt and energetic course for the support of our liberty, and the protection of our property, and our lives; therefore,

“1st. *Resolved*, That we deem it of vital importance to forthwith form, organize, and establish a government ‘ad interim,’ for the protection of Texas, which shall have full, ample, and plenary powers to do everything which is contemplated to be done by the General Congress of the people, under the powers granted to them by the Constitution, saving and excepting all legislative and judicial acts.

"2nd. *Resolved*, That said government shall consist of a chief executive officer, to be styled the President of the Republic of Texas; a Vice-President, Secretary of State, Secretary of War, Secretary of the Navy, Secretary of the Treasury, and Attorney General, whose salaries shall be fixed and determined by the first Congress of the Republic.

"3rd. *Resolved*, That all questions touching the powers hereby confided to these officers shall be decided by a majority of said officers.

"4th. *Resolved*, That the President be elected by this Convention; and that the candidate or the individual having the majority of the whole number of votes given in, shall be, and is hereby declared to be duly elected.

"5th. *Resolved*, That the Vice-President, the aforesaid Secretaries and the Attorney General be elected by this Convention, a majority of the whole number of votes being requisite to a choice.

"6th. *Resolved*, That the members of this body vote for the above named officers 'viva voce.'"

The government thus inaugurated was not state but national, embodying all the attributes of sovereignty. Actual hostilities were then going on, and naturally more attention was given to the executive department than to either the legislative or judicial. The only reference to either of the latter in the ordinance is to deny to the Government *ad interim* the power to exercise their respective functions. The change in the government growing out of the substitution of national for state sovereignty was fully recognized in the Constitution of the Republic; but no provision conforming the existing judiciary to such change was made in the executive ordinance for the Government *ad interim*, and President Burnet and his cabinet found themselves without courts authorized to deal with national or international matters. Several vessels were captured, and it became a very practical and perplexing question as to who should deal with these prizes, and determine the questions of maritime and international law arising. The difficulty, and the steps taken to meet it, are given quite graphically in the first message of President Burnet to the First Congress of the Republic, October 4, 1836,¹ as follows:

¹Journal House of Representatives of First Congress, pp. 17 and 18.

“The judicial department of the government is in a very imperfect state. By the Constitution, the old system is abolished, and an entirely new judiciary is created; but it was not considered advisable by the executive government to make any further innovations upon the established course than necessity imperatively demanded. The courts were closed to civil business, and they were thought to be adequate to the conservation of the public peace of the country; but I am apprehensive that that opinion is illusory, and that a more energetic administration of criminal law is indispensable. The increase is an invariable concomitant on increase of population.

“Under the existing system, there was no tribunal in the country vested with maritime jurisdiction, and consequently none competent to adjudicate questions arising from captures on sea. Some prizes had already been taken, and it was due the character of our navy and the country that a regular and lawful disposition should be made of them. The government, therefore, concluded to appoint a district judge for the district of Brazos, within which it was probable all prizes then taken would be brought, or to which they could easily be transported. I accordingly appointed Benjamin C. Franklin, Esquire, to that office. It remains to the wisdom of Congress to determine how soon the new organization shall be perfected.”

The exact date of this appointment is not given. This action in effect anticipated the adoption of the Constitution of the Republic, and gave Judge Franklin the powers and jurisdiction of a district judge under that instrument. His appointment, and the value of his services, were recognized by Congress, which made an appropriation for the payment of his salary.¹

On July 23, 1836, the Government *ad interim* ordered an election to be held on the first Monday in September for the adoption or rejection of the Constitution of the Republic, and the election of officers thereunder. The Constitution was adopted.

At the date at which the subject was introduced, the whole jurisprudence of the country, substantive and adjective, was the Spanish Civil law. Up to the time now reached Common law ideas had

¹Acts of First Congress, p. 276.

so far prevailed that in all criminal matters it, the Common law of England, had become the law of Texas; and in civil matters, juries had been introduced; but in all other respects, the Spanish law still prevailed.

The system of courts adopted by the Constitution of the Republic consisted of, first, one Supreme Court with appellate jurisdiction only, composed of a chief justice and the several district judges throughout the State, as associate justices; second, district courts, which had exclusive original jurisdiction in all admiralty and maritime cases, in all cases against ambassadors, public ministers, and consuls, of all criminal cases punishable with death, and original jurisdiction in all civil cases, when the matter in controversy amounted to one hundred dollars, or more; third, county courts, one in each county; and fourth, justice courts in the smaller political subdivisions. The jurisdiction of the district court, except as indicated above, was not exclusive, and the jurisdiction of the inferior courts was not fixed by the Constitution; so that the divisions of jurisdiction among these courts was left largely to Congress.

Congress at once set to work to bring governmental order out of the existing chaos and to provide for the establishment and maintenance of all the instrumentalities necessary to this purpose. The judicial department received its full share of attention and acts were passed organizing and fixing the jurisdiction of the system of courts contemplated by the Constitution. As the first Texas legislation by the Anglo-Americans on this subject these acts are important and still interesting.

The act organizing the Supreme Court passed December 15, 1836. Some of its sections are as follows:

"Section 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled:

"That there shall be established in this Republic a court to be styled the Supreme Court of the Republic of Texas, which court shall consist of one supreme judge, to be styled the Chief Justice; to be elected by joint vote of both houses of Congress, and such judges as shall be elected judges of districts courts, who shall continue in office during the time prescribed by the Constitution. The Chief Justice shall receive a salary of five thousand dollars per annum, payable semi-annually at the treasury of the Republic.

"Section 2. The Supreme Court shall be held annually at the seat of government, on the first Monday in December, and a majority of all the judges shall be necessary to constitute such a court.

"Section 3. The said Supreme Court shall have jurisdiction over, and shall hear and determine all manner of pleas, complaints, motions, causes and controversies, civil and criminal, which may be brought before it from any court in this Republic, either by appeal or other legal process, and which shall be cognizable in said Supreme Court according to the Constitution and laws of this Republic: *Provided*, That no appeal shall be granted, nor shall any cause be removed into the Supreme Court in any manner whatever until after final judgment by decree in the court below, except in cases particularly provided for by law.

"Section 4. When by appeal or in any other manner permitted by law, the judgment, sentence, or decree of the court below shall be reversed, the Supreme Court shall proceed to render such judgment, or pronounce such sentence or decree as the court below should have rendered or pronounced, unless it be necessary, in consequence of the decision of the Supreme Court, that some matter of fact be ascertained, or some damages be assessed by a jury, or when the matter to be decreed is uncertain, in either of which cases the suit, action or prosecution, as the case may be, shall be remanded to the court from which it was brought for a more definite decision."

"Section 8. The said court, or any judge thereof, in vacation, may grant writs of injunction, supersedeas, and such other writs as the laws permit to the judgments or decrees of the county or district courts, on such terms and conditions as the laws may prescribe in cases of appeals, and also to grant writs of habeas corpus, and all other remedial writs and processes granted by said judges by virtue of their office, agreeably to the principles and usages of law, returnable as the law directs, either to the Supreme Court or to any judge of said court, as the nature of the case may require."¹

The jurisdiction of the district court was defined by act approved December 22, 1836, as follows:

"Section 4. The district courts in the several counties of the

¹Acts of First Congress, p. 79.

Republic, shall have original jurisdiction of all suits of whatsoever nature or description, when the matter in controversy shall be one hundred dollars or upwards, and which are not especially cognizable in some other court established by law; and shall have power to hear and determine all prosecutions in the name of the Republic, by indictment, information, or presentment for treason, murder, and other felonies, crimes and misdemeanors, committed within their respective jurisdictions, except such as may be exclusively cognizable before a justice of the peace, or in some other court of this Republic; and shall, in criminal cases, have and exercise all the powers incident and belonging to a court of oyer and terminer and general jail delivery, and generally to do and perform all other acts lawfully pertaining to a district court of this Republic. And the judges of said courts, and each of them, either in vacation or term time, shall have authority to grant writs of habeas corpus, mandamus, injunction, supersedeas, and all other remedial writs known to the law, not repugnant to the Constitution, returnable according to law, into the Supreme Court, or either of the said district courts, as the case may be."

The provisions relating to appeals was as follows:

"Section 15. Any party may appeal from any final judgment or decree of any district court, during the term at which the decree was rendered, to the Supreme Court, provided the amount in controversy amounts to three hundred dollars, upon entering into bonds and security, to be approved of by the court, in double the amount of the debt or damages in the said suit, for prosecuting the same with effect, or performing the judgment, sentence or decree, which the Supreme Court shall make or pass thereon, in case the applicant shall have the case decided against him."¹

The organization and jurisdiction of the county court was provided for by act approved December 20, 1836, as follows:

"Section 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled:

"That there shall be established in the several counties of this Republic an inferior court of law which shall be styled the county court, of the county of ———, to be composed of one chief justice, who shall be elected by joint ballot of both houses of Congress,

¹Acts of First Congress, p. 198.

and shall hold his office for a period of four years, and two associate justices, who shall be selected by a majority of the justices of the peace of each county, from among their own body, at the beginning of each and every year, and the justices so elected shall attend the county courts, or pay a fine to be assessed by the chief justice not exceeding one hundred dollars."

"Section 6. The several county courts of this Republic shall have original jurisdiction of all suits and actions for the recovery of money, founded on any bond, bill, promissory note, or other written contract, covenant or agreement whatsoever, or any open account where the sum shall exceed one hundred dollars, and shall have concurrent jurisdiction with the district courts in such suits and actions: *Provided*: That no suit relative to the title of land shall be tried and determined in said court, and generally to do and perform all other acts, and exercise all other powers, lawfully pertaining to a county court within this Republic."

"Section 24. The chief justices of the county court shall be judges of probate for their respective counties, shall take the probate of wills, grant letters of administration of the estates of persons deceased, who were inhabitants of or residents in said county, at the time of their decease, shall appoint guardians to minors, idiots, and lunatics, and in conjunction with the associate justices, shall examine and settle the accounts of executors, administrators, and guardians; and said chief justice shall have full jurisdiction of all testamentary and other matters appertaining to a probate court within their respective counties."

In addition to the jurisdiction thus conferred, these courts had supervision and control of the business matters of the county, roads, etc., such as our county commissioners now have.

The provisions relating to appeals are as follows:

"Section 13. Any party may appeal from any final judgment or decree of any county court, provided the amount in controversy shall exceed two hundred dollars, to the district court for said county, in the same manner and under the same restrictions as provided in the sixteenth section of 'an act establishing the jurisdiction and powers of the district court,' and the forty-second section of the aforesaid act, shall apply equally to the county courts, so far as is consistent with this act."

"Section 26. Any person may appeal from any decision or de-

cree of any court of probate, within ten days after such decision or decree shall have been rendered, to the district court of the county, provided such appellant shall give bond with good and sufficient security, to be approved by said court of probate, conditioned that said appellant shall prosecute said appeal to effect, and perform the sentence, judgment, or decree which the said district court shall make therein, in case the cause be decided against said appellant.”¹

The justices of the peace had large power as committing magistrates, but seem to have had no power to finally try any criminal case.

Their jurisdiction in civil cases was as follows: “Justices of the peace shall have jurisdiction of all suits and actions for the recovery of money on any account, bond, bill, or promissory note, or other written contract, covenant, or agreement whatsoever, or for specific articles, where the sum demanded does not exceed one hundred dollars.”²

Section 7 of the general provisions of this Constitution is: “So soon as convenience will permit, there shall be a penal code formed on principles of reformation, and not of vindictive justice; and the civil and criminal laws shall be revised, digested and arranged under different heads; and all laws relating to land titles shall be translated, revised and promulgated.”

Section 13 of the judiciary article of the Constitution is: “Congress shall, as early as possible, introduce by statute the Common law of England, with such modifications as our circumstances, in their judgment, may require, and in all criminal cases the Common law shall be the rule of decision.”

In obedience to this mandate, the First Congress incorporated in the judiciary legislation of its first session, the following article:

“The Common law of England, as now practiced and understood, shall, in its application to juries and to evidence, be followed and practiced by the courts of this Republic, so far as the same may not be inconsistent with this act, or any other law passed by this Congress.”³

¹Acts of First Congress, p. 147.

²*Ibid.*, p. 141.

³*Ibid.*, p. 157.

Thus, on these two important branches of the adjective law, evidence and trial by jury, the Civil law and prior statutory provisions were superseded, and the rules of the Common law, to which the citizens had been accustomed, were introduced.

Other Common law methods of procedure were not adopted. The few years of their experience with the administration of justice in all civil cases in one court, even under the very great disadvantages then existing, had demonstrated to these pioneers, who were wise enough to receive the truth from any quarter, that the maintenance of separate courts of law and equity was not to be desired, and they declined, therefore, to incorporate this feature of the Common law into the system they were framing. In regard to pleading, the same influences operated. Neither the system obtaining in courts of the Common law, nor in courts of Equity, was entirely adapted to the new conditions. The Common law system, with its single issue, and its forms of action, could not be adjusted to the procedure necessary in a court of blended jurisdiction; and the Equity system was not in all things suited to jury trials; besides, there were elements of formalism in each, which might well be looked upon as hindrances, rather than aids, in arriving at justice. On the other hand, the pleadings of the Civil law were very simple, and admirably adapted to the development of truth. ¹

The laws of Coahuila and Texas regarding pleadings, as before quoted, provided for a petition by the plaintiff, a contestation by the defendant, a replica by the plaintiff, and a duplica by the defendant. In these pleadings, the parties were respectively allowed and required to set forth, in a plain and intelligible manner, the facts upon which they respectively relied to sustain their positions before the court; in short, to state to the court the real truth of the matter in controversy, so far as they might be able.

The responsibility of choosing between these two systems, the Common law and the Spanish Civil law, devolved primarily on Congress. On December 20, 1836, Congress passed an act organizing the district courts. Its only section referring to pleading is as follows: "It shall be the duty of the plaintiff, or his attorney, in taking out a writ or process, to file his petition, with a full and

¹The Laws of Las Siete Partidas (translated by Lislet & Carleton), Vol. 1, law 1, p. 36; law 32, p. 52; law 31, p. 51; law 40, p. 57; laws 7, 8, 9, 10 and 11, pp. 70-74.

clear statement of the names of the parties, whether plaintiff or defendant, with the causes of action, and the nature of relief he requests of the court."

This section makes no mention of defensive pleadings; but the courts interpreted it, in the light of the constitutional provision, that old laws should continue until changed by Congress, as a practical adoption of the system theretofore obtaining, and so enforced it. The earliest mention by our Supreme Court of "petition and answer" as a system of pleading, occurs in the third paragraph of the opinion rendered at the January term, 1840, in *Winfred vs. Gates, Dallam*, 364. This opinion declared that the Spanish system of pleading was still in force. The exact date of the opinion is not given; but it was the ninth case decided by the Supreme Court of the Republic, at the January term, 1840.

The Fourth Congress of the Republic, early in its first session, January 20, 1840, passed an act entitled:

"An Act to Adopt the Common Law of England, to Repeal Certain Mexican Laws, and to Regulate Marital Rights of Parties."

Sections 1 and 2 of this act are as follows:

"Section 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the Common law of England, so far as it is not inconsistent with the Constitution or acts of Congress now in force, shall, together with such acts, be the rule of decision in this Republic, and shall continue in full force until altered or repealed by Congress.

"Section 2. Be it further enacted, That all laws in force in this Republic prior to the 1st of September, one thousand eight hundred and thirty-six (except the laws of the Consultation and provisional government now in force; and except such laws as relate exclusively to grants and the colonization of land in the State of Coahuila and Texas, and also, except such laws as relate to reservations of islands and lands, and also of salt lakes, licks, and springs, mines, and minerals of every description, made by the General and State governments) be, and the same are hereby repealed."

The effect of this, unqualified by other legislation, would have been to annul all laws enacted prior to the adoption of the Constitution of the Republic, except those specially retained, and to substitute therefor the Common law and the Constitution and then existing statutes of the Republic; and, as Congress had not passed

any general practice act, the Common law system would have been in force. This was prevented, however, because at the same session, Congress passed an act entitled, "An Act to Regulate Proceedings in Civil Suits." This was approved February 5, 1840.

Section 1 is as follows:

"Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled, That the adoption of the Common law shall not be construed to adopt the Common law system of pleading; but the proceedings in all civil suits shall, as heretofore, be conducted by petition and answer; but neither petition nor answer shall be necessary in a cause to recover money before a justice of the peace."

A portion of Section 12 is as follows:

"In every civil suit, in which sufficient matter of substance may appear upon the petition, to enable the court to proceed upon the merits of the cause, the suit shall not abate for want of form. The court shall, in the first instance, endeavor to try each cause by the rules and principles of law. Should the cause more properly belong to equity jurisdiction, the court shall, without delay, proceed to try the same according to the principles of equity. * * * Provided, nothing herein contained shall be so construed as to prejudice the right of the parties to a trial by jury."¹

This is the first reference in Texas to the difference between law and equity; but it must be noticed that there is no separation of the jurisdictions; both law and equity are to be administered by the same court in the same cause, and trial by jury is not to be precluded by the exercise of equity powers by the court.

Congress, at the same session, passed an act that laws passed by it should not go into effect until forty days after adjournment, unless otherwise expressly provided.² This act had such a provision, but there was none in either the act adopting the Common law, or the one denying its application to our system of pleading. These two acts, therefore, went into effect at the same time, forty days after adjournment of Congress, and must be construed as parts of the same act. Hence, the Common law system of pleading in civil suits did not obtain in Texas at any time under these acts.

¹Laws of Fourth Congress, p. 88.

²*Ibid.*, p. 6.

In the case of *Fowler vs. Poor*, decided by the Supreme Court of the Republic, January term, 1841, Dallam, 403, this language occurs:

“Our system of proceedings in civil suits differs from that known in England, and adopted in most of the States of the United States. * * * The mode of conducting proceedings in civil suits by petition and answer, is so highly appreciated by the legislative power of this Republic, that at the last session of Congress, it was expressly enacted, that “the adoption of the Common law shall not be construed to adopt the Common law system of pleading, but the proceedings in all civil suits shall, as heretofore, be conducted by petition and answer.” Here is strong legislative declaration that the proceedings in civil suits had been heretofore commenced by petition, and that they shall be conducted in the same manner for the future.”

In *Hamilton vs. Blank*, Dallam, 587, decided at the June term, 1844, the Supreme Court says: “The object of our statutes on the subject of pleading, is to simplify as much as possible that branch of the proceedings in courts which, by the ingenuity and learning of both Common and Civil law lawyers and judges, has become so refined in its subtleties as to substitute in many instances the shadow for the substance. Our statute requires at the hands of the petitioner to a court of justice only a statement of the names of the parties plaintiff and defendant, a full and fair exposition of his cause of action, and finally the relief which he asks.”

Many other interesting cases could be given from the decisions of the Supreme Court of the Republic to show that the practical interpretation of the statutes under consideration was that the Common law system of pleading was never in force in Texas, and that the purpose of the lawmakers was to eliminate as far as possible all technicalities and useless forms, and require only a full and fair statement of the facts upon which the party relied, and the relief sought from the court, supplemented by a few indispensable matters, such as names and residences of parties, etc., to enable the court to act intelligently. This is substantially the Texas system of pleading today.

There were no material changes made during the Republic in the judicial system thus established. In dealing with this period of our history, we must not lose sight of the important fact that at

this time the Supreme Court consisted of a chief justice and the district judges sitting together. This plan, impracticable under most circumstances, was of great value then; it was the unifying and harmonizing element in the system. The laws of Coahuila and Texas were in a language unknown to most of the judges, and to a large extent inaccessible to the few that could have translated them. The enactments of Congress on methods of procedure were meagre, and the meeting and interchanging of views on these matters by the several district judges, when assembled for the purpose of holding the Supreme Court, must have been salutary in its influence, and have had a strong tendency to introduce the same procedure in all courts.

During the year 1845 it was definitely determined that the Republic of Texas should surrender its nationality, and take a place as a State in the Federal Union. A State Constitution looking to this end was prepared and adopted; State officers were elected; and on February 16, 1846, the State government was organized, the Republic of Texas passed into history, and in her stead the State of Texas became a member of the United States of America.¹

The formative period of her history had passed. Though there have been many modifications made from time to time to adjust herself to the varying conditions of her development, the fundamental ideas of her jurisprudence have remained unchanged. To trace the most important of these modifications affecting her judicial system will be the purpose of a subsequent paper.

¹Cocke vs. Calkin & Co., 1 Texas, 541; Calkin v. Cocke, 14 Howard, 225; Lee vs. King, 21 Texas, 577.

H. P. BEE.

F. R. LUBBOCK.

General Hamilton Prioleau Bee was born in Charleston, S. C., July 22, 1822, and died in San Antonio, Texas, on October 3, 1897, aged 75 years. His grandfather was Judge Thomas Bee, who held a commission from President Washington, as Judge of the United States Circuit Court for South Carolina, and his father, Col. Barnard E. Bee, occupied quite a conspicuous place in the history of the Texas Republic, having been Secretary of War under President Sam Houston, and Secretary of State under President M. B. Lamar, and also Minister to the United States and to the Republic of Mexico, though Santa Anna declined to receive him, treating the young Republic as a rebellious province, notwithstanding the Mexican disaster at San Jacinto.

After Santa Anna's surrender to General Houston, he was sent to Washington, in order that he might, in the presence of President Jackson, renew the promises he had made, in order to secure his liberty, and Colonels Hockley, Bee, and Potter were selected to accompany him. It became necessary for him to have a large sum of money, about three thousand dollars, and Colonel Bee advanced it, receiving in return a draft on Santa Anna's bank, in the City of Mexico, for the amount. Upon presentation, the payment of the draft was refused by Santa Anna, on the ground that at the time of its execution, he was a prisoner of war, and, therefore, under duress. Colonel Bee died in 1854.

General Bee's brother, General Barnard E. Bee, was a graduate of the West Point academy, and was killed at the battle of Manassas, being the first general officer killed in the Civil War. He was a splendid soldier, and he it was that christened Gen. T. J. Jackson as "Stonewall," while rallying his troops, saying to them: "See, there is Jackson, standing like a stone wall. Let us determine to die here, and we shall conquer."

He was soon after mortally wounded, while holding in his hand the beautiful sword presented to him by the State of South Carolina for his distinguished services in the Mexican war.

Hamilton P. Bee, at the early age of fifteen years, brought his mother out to the then young Republic of Texas, the trip being made by sea, on the steamship *Columbia*. They landed at Galveston, Texas, then lately desolated by a fearful storm, in November, 1837. His father was then in Houston filling the office of Secretary of War, and the subject of this sketch thus linked his life with that of the young Republic. Dutifully and faithfully he followed during life its standards through all the mutations of fortune, always true to the cause of Texas. He first held the position of clerk in the Comptroller's office, the Comptroller being the writer of this article.

It is a marked incident, as showing the stupendous progress of the State, that at that time there was only one clerk in the Comptroller's office, and now the working force is counted by scores.

The friendship thus begun between the Comptroller and his clerk continued unbroken throughout.

General Bee lived in Houston until his father retired from President Houston's cabinet, when the family moved to Velasco. Here they resided until the election of Lamar, when they returned to the capital, Colonel Bee assuming the position of Secretary of State.

When the capital was removed to Austin, General Bee took up his residence in that village, and engaged in the study of law under Judge Webb, a distinguished lawyer of the early days. The Comanche war soon breaking out, he joined the army, which engaged in several conflicts with the Indians, including the battle of Plum Creek, in which the Texans, commanded by Gen. Ed Burleson and Col. Jno. H. Moore, were completely successful, routing the Indians and recovering a large part of their stolen plunder. Later on, in 1840, General Bee acted as Secretary of the Commission that ran the boundary line between the Republic of Texas and the United States, the Texas Commissioner being Gen. Memucan Hunt. The engineer in charge was Major Graham, of the United States Corps of Engineers. He was the father of Gen. W. M. Graham, who at present is in command of the Department of the Gulf, and Lieuts. Jos. E. Johnston and Geo. C. Meade were the assistant engineers. These officers afterwards occupied prominent places in the late "War between the States." The expedition started from the mouth of the Sabine and followed the line of the

Sabine River to its source, thence to Red River. Its work was of a very satisfactory nature.

When the Vasquez raid on San Antonio occurred in 1842, he volunteered and joined a company that set out to assist in expelling the invaders. By the time San Antonio was reached the trouble was over, and the command, after a short stay in the vicinity, returned home. Meanwhile President Houston conceived the plan of arranging a meeting at Bird's Fort—the present site of Fort Worth—of all the tribes of Texas with the Commissioners from Texas, for the purpose of making a treaty of peace. General Bee accompanied the Commission, headed by Col. Jos. C. Eldridge, as secretary. There was only one other member of the Commission, Thos. Torrey, a member of the Torrey family, so well known in Southwest Texas, and they were accompanied by three Delaware Indians as guides and interpreters. This expedition started out in 1843 from Washington on the Brazos, at that time the seat of government, and was absent for over eight months. It was filled with exciting experiences and at times promised to terminate fatally to the members of the Commission.

The Commission visited all the wild tribes extending as far north as Fort Sill in the Indian Territory, and succeeding in inducing the tribes to meet with the Texas Commission.

In 1846, General Bee was elected Secretary of the First Senate of Texas; but when the war with Mexico broke out he joined Capt. Ben McCulloch's company and participated in the battle of Monterey. He afterwards became first lieutenant of M. B. Lamar's company and continued in the service until the close of the war. He then took up his residence in Laredo and engaged in merchandising. He was next elected a member of the legislature, and served in that capacity from 1849 to 1856. He was Speaker of the House from 1854 to 1856, filling the office with great credit to himself and his constituents. He was a delegate to the Democratic convention at Cincinnati which nominated Buchanan for President in 1856. After retirement from the legislature, he engaged in planting near Goliad, where he was living at the outbreak of the war. He served as presidential elector and cast his vote for Jefferson Davis as President of the Confederate States. He was shortly afterwards appointed brigadier general of the State militia by Governor Edward Clark, and then commissioned a

brigadier general in the Confederate States army and assigned to the command of the Western District of Texas, stationed at Brownsville. He was desirous of finding a place in the main theater of the war, but in vain, since by reason of his acquaintance with the frontier and with the people of Mexico, his services were considered indispensable to the Confederate cause in that quarter.

He remained in command at Brownsville until the arrival of Banks' army at the mouth of the Rio Grande, when with the one company which had been left with him—the others having been ordered to the more eastern seat of war—he retired to the interior, taking with him a large amount of government supplies, etc. Upon reporting to General Magruder he was assigned to the command of a brigade consisting of the regiments of Likens, Terrell, De Bray, Woods, and Buchel, and marched to Louisiana, where he participated in the battles of Mansfield and Pleasant Hill. He led the cavalry charge at the battle of Pleasant Hill, one of the most brilliant on record, in which the gallant Col. A. Buchel lost his life.

After the Red River campaign, General Bee returned to Texas and continued with the army as a cavalry commander until the close of the war.

On the fall of the Confederacy, General Bee sought in Mexico to retrieve his lost fortunes, but after spending some years in that country, he returned to Texas and was appointed to a responsible position at the Agricultural and Mechanical College of Texas. After the expiration of his term he moved to San Antonio in 1879, where he continued to reside until his death, with the exception of two years spent at Austin as Commissioner of Insurance, Statistics and History, under the administration of the lamented Governor John Ireland.

General Bee was married in 1854 to Miss Mary Mildred Tarver, who survives him. Of their large family six are yet alive. He was a splendid type of the old school of Southern gentlemen—honorable, high-toned, brave and chivalrous. He passed his long life with the people of Texas, being the contemporary and associate of Lamar, Henderson, Ford, Burleson, Maverick, and a host of others whose names have become historic. He was earnestly interested in the history of Texas and its perpetuation, and died as he had lived, universally beloved and admired for his sterling qualities of mind and heart. Peace to his ashes.

THE CHEROKEE NATION OF INDIANS.

V. O. KING.

[For much of the matter contained in this paper I am indebted to the Bureau of American Ethnology and to Mr. Charles C. Royce and Professor Cyrus Thomas, its learned and efficient workers. These sources of information may be profitably consulted by any person interested in the aboriginal literature of our country.—V. O. K.]

The Cherokees, more properly the Tsullakees, have occupied a more prominent place in the affairs and history of the United States than any other tribe, with the possible exception of the Iroquois, or Six Nations, of New York. They bear some resemblance to each other, and though an open question, the Cherokee dialect is held by the American Bureau of Ethnology to belong to the Iroquoisan family of languages. This opinion leaves the inference that in the remote past there was tribal union between them.

Less than half a century after Columbus touched these shores, De Soto and his followers began their march to explore the lands that lay beyond. They penetrated the country as far as what is now the northern limits of Georgia, and the northeastern corner of Alabama, when they came in contact with a tribe of natives, reported in their memoirs as Chelaques, but which have since been abundantly identified with the Cherokee Indians. They occupied as homes and hunting-grounds nearly the whole territory south of the Ohio river and east of the Mississippi—the areas excepted being the present States of Mississippi and Florida, and the southern extremities of Alabama and Georgia.

Among the most interesting of the relics that reveal somewhat of the inner life of these autochthones at this early period, are their sacred formulas, transmitted to them from a remote past, through traditions confided to their shamans, or priestly fathers. For a knowledge of these formulas, the world is indebted to the genius of an unlettered Cherokee. Sequoyah, in 1821, with a marvelous gift of invention, and unaided by artificial learning, constructed a syllabary, by means of which the speech and thought of his people were, for the first time, brought in obedience to written characters.

No other tribe in North America had then an alphabet of its own. The Crees and Micmacs, in Canada, and the Tukuth Indians, in Alaska, had ideographic systems, invented by missionaries, and the Mayas, in Central America, wrote in hieroglyphics, but neither of them possessed a literary contrivance by which words and sentences could be constructed, after the method of a true orthography. The admirable genius of Sequoyah gave to his people this contrivance, by which their sacred formulas were rescued from infirm or unfaithful memories, and have become part of the written literature of the native races. Many of the formulas, thus escaped from the crypt of ages, have been secured by the United States Bureau of Ethnology, and possess for the lover of aboriginal research the peculiar interest that in them is embalmed the faith and the philosophy of one of the most striking of the primitive peoples of the continent. These formulas are terse, turgid, and cabalistic phrases addressed to their divinities, and which, though chiefly in the form of supplication, are sometimes songs of praise and eulogy, and sometimes charms to compel the favors of languid or reluctant spirits. In this latter form, they are multiplied to meet every danger and every exigency of life; and in war, in pestilence, in famine, in floods, in droughts, they are trusted with reverent, unfaltering faith. The lover, the hunter, the warrior, each, through his shaman, appeals to the potential energy of the formula for the successful issue of his enterprise. Even after the missionaries of the white men had introduced their religion among these simple worshippers, and they had surrendered most of their creed, they still held tenaciously to the formulas, as if, in some manner, interwoven with the destiny allotted them. The shaman, after his profession of the Christian faith, combined his mystic phrases with texts of Scripture in the same religious service, and it was not uncommon to see him publicly officiating as Indian conjurer and Methodist preacher.

The formulas, in their structure and purpose, very closely resemble the phylacteries of the Hebrews, which consist of extracts from their sacred book written on strips of parchment and, according to the Targum, worn about the person as amulets to drive away evil spirits. That these phylacteries should reappear in oral form among an unlettered people, between whom and Israel there are other points of resemblance, may, not unreasonably, be taken as

an added argument in support of the theory that part of the Jewish captives wandered from Assyria into the New World, where they were absorbed and lost in the broad and friendly bosom of their indigenous host.

The sacred formulas possess an ethnologic value second to no other known means of discovering tribal cult and character, and they afford measureless aid to the study of native folklore before it was influenced by the white man's presence. The MEDICAL Formulas are concerned only with the health of the people, and they are based upon the following allegory: All the animals of the earth met in council to devise means for the destruction of man, their common enemy. Each species possessed the power over some particular deadly pestilence; these distempers they combined and turned loose upon the devoted race. The suffering and mortality that followed were so appalling as to excite the pity of the vegetable world, which, in its turn, called a council. Each species in this Kingdom was gifted with the balm that brought healing to some one of the many ills that afflict mankind, and, in the supreme moment of his despair, they distilled their life-giving balsams for the deliverance of man. The Shamans, who lived in close communion with floral nature, were intrusted with her secrets; these secrets they embodied in formulas which they delivered to the people that they might hear the glad message; and thus they were saved. To the credit of this tradition, it may be affirmed that their Shamans were really instructed in the medicinal qualities of many indigenous plants. Other plants in their *Materia Medica* were wholly inert; these they employed as fetiches from some fancied resemblance to diseased organs, for the principle of "*similia similibus*" was as familiar to their ancestors as to the modern school of Doctor Hahnemann. Failing memory was treated with *beggartlice* and other burr-bearing plants, that the sticking qualities of the burrs might be imparted to the memory. *Goat's Rue* was prescribed for falling out of the hair because the roots of this plant are tough and difficult to pull up. The *Maidenhair Fern* was administered for rheumatism that the contracted muscles might unbend as the fronds of the fern unroll during its healthy growth. But the MEDICAL Formulas were not restricted to *drugs* as curative agents. The bath, especially in a running stream, was a most trusted resource in the Cherokee therapeutics, and it is curious to

note that the patient was directed to plunge seven times in the healing flood, even as Elisha, three thousand years before, directed Naaman to wash in Jordan "seven times" for his leprosy. The numeral *seven*, it may be remarked, was as much a mystical number with the Cherokee as with the Israelite; this is shown in his law establishing the seven days' purification and in other ceremonial customs enjoined by his faith.

The RELIGIOUS Formulas of the Cherokees reveal a system of belief and practice almost unique. They had no Great Spirit, yet their pantheon was crowded with gods; they looked forward to no happy hunting-ground as the reward of their courage and sacrifices, but their faith was immovable in the temporal rewards that were to crown their savage virtues. Long life, freedom from pain, success in war, in love, in the chase, were the gifts of the gods they worshiped, and their name was legion. They saw these gods clothed in the forms of birds and reptiles, of mountains and streams, they heard their voice in the storm and felt their presence in the frost, and they bowed down in homage to them all. When death came it was to them the end of all things; no fears disturbed their last moments and no sorrow wrung the heart of their children.

The MILITARY Formulas of the Cherokees were designed to render their warriors invulnerable in battle, to which end they prescribed charmed roots and ceremonial washings. A writer for the American Bureau of Ethnology, referring to the practice here enjoined, mentions the fact that it was religiously observed by almost every man of the three hundred Cherokees who served in the war between the States, and he humorously adds, "It is but fair to state that not more than two or three of the entire number were wounded in actual battle."

The devotional methods of the Cherokee disclosed by these Formulas and the traditions inspiring them reveal in him an essentially religious mind—the result of his close relation to creative power. Like the Jew, and in common with other Indians, he "believed himself to be the result of a special creation by a partial deity, and held that his was the one favored race," but, unlike the Jew, he has not been able to impress his sacred character upon other races of men.

It was nearly a century after the expedition of De Soto before the Cherokees again met the white man. Then they encountered the pioneers from the Atlantic coast, and then the racial conflict began—a conflict that for two hundred and fifty years has been waged against the rapacity of Anglo-Saxon civilization. When first begun, the villages of the Cherokees covered the mountains and valleys of the Shenandoah, and their scouts camped on the summit of Monticello. Upon the Blue Ridge the Cherokee sat as upon a throne; within his dominion was cradled “the Tennessee and the Cumberland, the Kanawha, and the Kentucky, the Pedee and the Santee, the Savannah and the Altamaha, the Chatahoochee and the Alabama;” along their banks he pursued his game, and upon their laughing waters his love-song and his war-whoop were carried to the sea. These scenes of sovereign sway remained undisturbed for many years after the white man became the red man’s neighbor. The distance between the mountains and the sea coast for a long time kept them apart. The cupidity of the white fur-trader, however, and the display of his coveted goods brought the two together within the dominions of the native monarchs. The Ahabs thus saw their neighbor’s splendid vineyard and were stricken with a passion to possess it. The title to the coveted possession was thenceforth to be only a question of time.

From 1721 to 1783, the Cherokees made ten treaties, by which the Colonies of Virginia, Georgia, and the two Carolinas acquired seventy thousand square miles of land. From 1785 to 1866, they executed thirty-five treaties with the United States, by which they ceded fifty-six thousand square miles of territory lying south of the Ohio river. To the new country thus acquired, the Americans of the Atlantic States were early attracted. Among these immigrants was the widowed mother of Sam Houston, who, with her family, moved from Virginia to Tennessee, in 1807, and settled on the Tennessee river, the boundary line between the American and Cherokee possessions. Her son, the future hero of San Jacinto, was then fourteen years of age, and was not long in finding his way across the river to the red braves of whom he had heard, and for whom he had conceived a most romantic passion. Their unfettered habits, their wild liberty, their love of adventure, found in him a responsive chord. He was daily, and often for days, without intermission, among his new friends, and for four years the companion-

ship continued. During this time he was adopted by the Chief Oolooteka, as his son. Two years afterwards, he fought in the Creek war, side by side with the Cherokees, as American allies.

Notwithstanding the vast areas acquired from the Cherokees, they were still in possession of extensive domains, and these gave rise to such frequent conflicts with white settlers, that the United States government resolved upon separating the hostile elements. As early as 1803, President Jefferson suggested the exchange with the Indians of their lands on the east of the Mississippi for equal areas on the west, lying within the Louisiana purchase. In 1809, a few Cherokees moved to Arkansas, and ten years later six thousand had emigrated; the majority, however, resented the most alluring offers, and clung with superstitious tenacity to their native hills and streams. Their obstinacy, and the commotion attending it, again brought Sam Houston into the drama of Cherokee life. He was appointed sub-agent to the refractory tribe, and successfully carried out the treaty recently concluded with it.

In 1822, a convention was made between the Cherokees and the Empire of Mexico, by which the Indians were permitted to occupy and cultivate certain lands in eastern Texas, in consideration of fealty and service in case of war. Neither the empire, however, nor its successor, the Republic of Mexico, would consent to part with their sovereignty in the soil, and persistently refused any other rights than those of domicile and tillage to the savage tenants. What is known in Texas history as the Fredonian War, was largely the result of this refusal. It was inaugurated under a solemn league entered into in December, 1826, between the white colonists and the disappointed tribes, and its purpose was to prosecute against Mexico a war of conquest, and divide the conquered territory. Owning to a combination of disasters, the expected recruits did not join the Fredonian standard, and its little army melted away under the apathy of friends and the overwhelming numbers of enemies.

In 1825, the Cherokees remaining east of the Mississippi numbered about thirteen thousand, and owned about the same number of slaves. They had adopted many of the habits and industries of the white man, and were rapidly adopting his laws and his civilization. Trusting to their interpretation of certain treaty guarantees, made by the United States, they formed themselves into a sovereign nation, within the limits of Georgia, which aroused the

resentment of the State, and resulted in serious complications with the general government—only tranquilized by tedious negotiations and wise counsels.

In 1828, the government ceded to the Cherokees seven million acres of land in Arkansas Territory, in exchange for lands east of the Mississippi. The year following, they were visited in their new home by their friend and former guest, Sam Houston. In the ten years that had elapsed since his sub-agency among them in the east, he had achieved distinction at home, had married a young wife, and had become Governor of Tennessee. For reasons not historically known, he had abandoned his bride, abdicated his high office, become a voluntary exile from civilization, and was then in the wild home of his friends, seeking the hospitalities of refuge that he knew would not be denied him. He there found Oolooteka, his adopted father, who took him to his bosom, and soon made him a citizen of the Nation. He lived three years among this untutored but warm-hearted people, and then was called back to civilization by the President's commission to negotiate a peace with the Comanche Indians. This took him to Texas, where distinction awaited him; also an opportunity to serve his constant friends.

After occupying the Arkansas tract for five years, the Cherokees, by a new treaty—that of 1833—exchanged it for seven million acres, lying in the present Indian Territory. The Cherokees east of the Mississippi were, meanwhile, agitating with endless conflicts the white people and their governments. They were haunted with the fear of forcible expulsion from their ancestral seats in the east, and of losing their tribal identity in the common mass of amalgamated savages in the west. There seems to be a sentiment universal in the human heart to cherish with reverence the ancestral stream down which has coursed its own life blood. "Even the meanest and most ignorant of the Tartars," says Gibbon, "preserved with conscious pride the inestimable treasure of their genealogy." Pride of ancestry had deep root in the Cherokee breast, and it cried aloud for resistance to acts that would, at a blow, rob them of both the name and the home of their fathers. They, therefore, in 1829, set up their claim to nationality, and to all the sovereign rights that belong to it. President Jackson answered this claim by recalling the fact that, during the Revolutionary War, they were the allies of Great Britain, and that, consequently, by the event of the war, their

sovereignty, like hers, ceased over every part of the territory embraced within the limits of either of the thirteen Colonies. He also recalled the fact, that, while the government, under the treaty of 1783, received the vanquished Cherokees "into favor and protection," it did not restore to them their lost sovereignty. A sullen discontent rankled in the bosom of these disappointed Indians for several years. At last, in 1835, a treaty was negotiated with them, by which they ceded to the United States all their remaining territory east of the Mississippi, consisting of about eight millions of acres; and stipulated to remove west two years after the ratification. The consideration therefor was five million dollars, and the new home designated was the western outlet lying beyond the Indian Territory. The removal of the Indians was opposed by John Ross, their Chief, and excited such general discussion that it forced itself into the politics of the day.

In this same year of 1835, the Western Cherokees sought recognition of their alleged claim under the Mexican convention of thirteen years before. The General Consultation, urged thereto by Sam Houston, who was a member of that body, also commander of the Texas army, affirmed their title to the lands they then occupied north and west of Nacogdoches and lying between the Neches and Angelina rivers. In February of the following year, Sam Houston, as chairman of a commission appointed by Governor Henry Smith, concluded with these Indians a treaty of amity, alliance and cession. In 1837 the senate of the Republic of Texas rejected the treaty of the Provisional Government, and in 1838 President Lamar directed the attention of Congress to this act of the senate, and to the further fact that Mexico had never, under any form of government, either conveyed or promised to convey as allodial property any portion of the Texas territory then, or at any time, occupied or claimed by the Cherokees. In July of the following year the Texan government summoned a conference with the Indians and proposed to reimburse their expenditures on condition of their peaceable return to the Indian Territory. Their wily chief, Bowles, prolonged the parley till he could bring up reinforcements. A two days' battle resulted. Rusk and Burleson, with five hundred Texans, drove a thousand braves out of the land, killing their leader and burning their villages. This appeal to arms decided the conflict of title in a manner that admitted of

no appeal and brought permanent peace to the settlements. Six months later, Gen. Rusk drove a remaining fragment of these Indians from San Saba county, in which they had sought refuge. In the following year their powerful and steadfast friend, Sam Houston, then a member of the Texan congress, made a last and vigorous appeal in their behalf. It was unavailing, and the Cherokees thenceforward ceased to vex the people of Texas with either their presence or their supplications.

During these struggles of the Western Cherokees for expansion of territory, their Eastern brethren were contending with the United States for the possession of the lands they had surrendered under the treaty, and were ultimately transferred by threats or by military force to the West. A few of their number had betaken themselves to the mountains of North Carolina and Tennessee, and thus escaped the general exodus of their tribe.

After all the Cherokees were finally settled on their extensive reservation in the West, it was found that they were torn by dissensions and divided into hostile parties. These parties were three in number: The "old settler" element that had voluntarily removed in 1819, the "Treaty" or "Ridge" element that migrated under the treaty of 1835, and the "Ross" element that was removed by military force. All efforts at reconciliation were futile; the chiefs grew more resentful under discussion; ferocity crept into every wigwam; and the assassination of prominent leaders became the rule of conduct expected of every patriot. These disorders could not be permitted by the government of the United States, and in 1844 the President appointed a commission to inquire into their cause and suggest a proper remedy. It met at Fort Gibson, but its inquiries yielded no practical results.

About this time, when the nation most needed the counsels of its wise men, it sustained an immeasurable loss in the death of the venerated and gifted half-breed, Sequoyah, also called from his Dutch father, George Guess, who, it will be remembered, was the unlettered inventor of the Cherokee alphabet. He has been called the Cadmus of his people; but greater was he than Cadmus. The Phœnician carried to Greece letters already invented, the Cherokee invented them himself. A true lover of his people, he had gone to Mexico to find and bring back the scattered bands of his discontented brethren and died in the midst of his search, and was

buried far from the tomb of his fathers and unsung in the solemn dirge of his nation.

After this great national bereavement, the factions grew more violent, and so great became their rancor that within the short space of a few months the annals of this wretched people were stained with a record of thirty-three murders of the nation's distinguished men. The United States again interposed their authority to put an end to this state of anarchy and crime. Commissioners conferred with representatives of the three factions and negotiated with them a plan of pacification out of which grew the treaty of 1846. It provided for the extinction of all sectional policies and a general amnesty of all political offenses; it also reaffirmed and extended the cession of land already made, and provided for their reversion to the United States in case of the extinction of the Cherokees or their abandonment of the possession.

After an interval of comparative repose, the Cherokees were again aroused by serious disturbance. White settlers were trespassing upon their territory, and abolitionists from the North were corrupting their slaves. The United States, in 1860, sent troops to expel the invaders, but the Civil War put a stop to these military operations. The war itself was the signal for further intestine strife. The Indians were divided on the question of slavery, and were, therefore, divided in their allegiance between the two contending sections. The Ross party was in sympathy with the North; its opponents were friendly to the South. The two factions, however, met in convention and there healed their differences, and as a single nation formed an alliance with the Confederate States. They organized two regiments for the Southern army, and placed them in command of Col. Drew and Col. Stand Watie, adherents of the Ross and anti-Ross parties, respectively. Col. Drew's regiment of Ross men soon deserted the Confederate colors and enlisted in the United States service. Ross then renounced his affiliations with the South and threw himself into the arms of the Federal government, not, however, to incur any peril in its defense, but to hide under the shadow of its protection; for he at once took refuge in the safe city of Philadelphia, in which he closely abided till the close of the war. The Indian Territory, meantime, became the theatre of guerilla warfare, and its warring factions daily grew in the fervor of their mutual hatred.

At the close of the war the United States became anxious to define their authority and to readjust Indian reservations conformably with plans to promote western emigration of citizens from the States. In pursuance of this purpose, delegates from all the tribes were summoned to meet in council at Fort Smith, and although no definite treaty resulted from this meeting, it afforded the commissioners an opportunity to submit the demands of the United States government for the preservation of peace and public order. It also enabled them to denounce John Ross as a public disturber, and degrade him from his chieftaincy; and it further afforded them the personal conference necessary to give adequate instructions to the two Cherokee factions for the submission of their grievances to the general government. For the purposes of this last object, representatives of the Federal and Confederate elements of the Nation repaired early in 1866 to Washington, where for several months their cause was judicially considered, though the court failed to effect the reunion so ardently desired by the government. In consequence separate treaties were negotiated with the hostile sections. In June that with the *Southern* Cherokees was concluded, by which a certain portion of the reservation was set apart for their exclusive use and subject to their exclusive jurisdiction. In July that with the *Northern* Cherokees was made, and inasmuch as they were in the majority, and in undisputed possession of the machinery of government, the treaty with them was made binding on the whole Nation. It provided by its terms for the establishment of a Federal court and one or more military posts in the Nation, also a general inter-tribal council; it authorized, under certain conditions, the settlement of other tribes in the Nation; it ceded to the United States in trust its "neutral" land and its "Cherokee strip," to be sold for the benefit of the Nation; it provided a right of way through the Nation from north to south and one from east to west for the construction of railroads; and it guaranteed the Cherokees in the peaceable possession of their lands, in the enjoyment of their domestic institutions, and against the unauthorized intrusions of white men. Two years later a supplemental article to this treaty was confirmed, whereby was ratified the sale of the "neutral land" made by the United States. Four years after this the government began the sale, in limited parcels, of the "Cherokee strip."

About the time of the proclamation of the treaty of '66, the Secretary of the Interior recommended to the commissioners to restore John Ross to the chieftaincy from which they had removed him. The old leader, however, had passed beyond the clemency of his judges; he lay stricken with a mortal sickness, and died within a few days at Washington, at the advanced age of seventy-six years. He was of Scotch-Indian parentage, and his character was strongly marked with the thrift of one side, the cunning of the other, and the persistency of both. Though only a half-breed, he was always the champion of the full-blooded Cherokees in any conflict between them and their brethren of mixed descent. His career, though not altogether an admirable one, was, throughout its course, singularly remarkable.

By virtue of a provision in the treaty of '66, a body of Delawares and a fragmentary band of Munsees, also about eight hundred Shawnees, were assigned homes in the Cherokee domain, and were merged into the great family tribe of the Cherokees. The Osages, the Kaws, the Pawnees, the Poncas, the Otoes, and the Missourias, also acquired homestead tracts in the Cherokee reservation, but they still preserved their tribal independence and identity. This infusion of a new strain into the national life of the Cherokees seemed to bring together the fragments of this broken people. A season of peace blessed their unhappy dwellings, and abundant harvests rewarded their reluctant toil. Two years of such contentment served to soften the asperities that had so long divided them, and to cover their past with a healing oblivion.

Under another provision of this treaty of '66, the Congress of the United States, by grants of lands and privileges, secured the construction of two important railroads through the Indian Territory. Both opened vast regions to civilization, and peopled them with a multitude of its pioneers. Many of these did not go beyond the Cherokee lands, and so great was their number, and so largely augmented by other alien residents and by the irruption of negro freedmen, that the Cherokees, realizing their feeble minority and the danger that threatened their power, enacted laws that limited the privileges of citizenship to their own unmixed people, and that provided for the removal of all others beyond their borders. These acts were resisted, not only by the sufferers under them, but by the United States government, whose authority was thereby superseded,

in violation of treaty engagements. In consequence, an order was promulgated, forbidding the removal of aliens unless by judicial process after due trial and approval by the Department of the Interior. The harsh procedure proposed by the Nation's legislative council was thus averted, but for ten years the questions involved provoked angry and unending conferences between the Federal government and the Nation, and kept the threatened classes in perpetual fear of physical harm or of ultimate eviction from their homes.

The United States government sought to remedy these evils, which, it was thought, resulted from the system of holding the entire Indian domain in a single unbroken tribal tract. Provision was, therefore, made, under act of February 8, 1887, for the allotment of lands in severalty to Indians on the different reservations. Four years later, part of the cause of the irritation was removed by the retrocession to the United States of the six million acre tract known as the "Cherokee Outlet" and the enrichment of the Cherokee treasury by a deposit of eight million dollars to its credit.

By act of March 3, 1893, Congress, among other measures of relief, made provision for the training school of the Cherokee settlement in North Carolina—the last remnant of the Nation east of the Mississippi. By the same act the system of land allotments already inaugurated was further strengthened and promoted. To this end the President was directed to appoint three commissioners to negotiate with the Five Civilized Tribes, of which the Cherokee Nation is one, for the surrender of tribal title to all lands in the Territory, either by cession to the United States, or by allotment in severalty among the Indians, or by other equitable means to be agreed on—this extinguishment of title to be the precursor of the creation of one or more States out of the lands so taken from the national domain. The agency created under this law is known as the Dawes Commission, so called from the name of its chairman. It has been perpetuated and its powers enlarged by subsequent acts, the last of which abolishes tribal courts in the Territory, substituting Federal courts in their stead, and gives to the President the veto power over all acts of tribal councils. Thus despoiled of a Nation's vital functions, but little remains to be done to complete the destruction of tribal autonomy; that little may be safely predi-

cated of the policy that has thus far directed the counsels and the conduct of the government.

The Dawes Commission has reported its inability to effect the submission of the tribes, and it particularly mentions the Cherokees as inflexible in their opposition to any agreement that contemplates the final act of tribal disintegration. The chairman is of opinion that the only remedy for the "evils that afflict these people" lies in the division and allotment of their public domain among the individuals of the several tribes. The Secretary of the Interior, in his report, presents a gloomy array of vicious results growing out of the Indians' methods of administering the public business, and he concludes his searching arraignment by recommending the total extinction of tribal government in the Territory and the substitution of a system by which the Indians will become United States citizens and be governed by United States laws. The President, in his message to Congress, fully accepts the Secretary's conclusions, and adds that the conditions of Indian life have so changed that their system of government has become "practically impossible," and that the evils resulting from the perversion of the great trusts confided to them can only be cured "by the resumption of control by the government which created them."

It does not require any remarkable perspicacity to perceive that history is about to close its brief page of the Cherokees as a Nation. Their broad fields and the boundless desire of their neighbors to possess them is hastening this consummation. The most universal passion in the breast of man seems to be an immortal longing after the soil from which he sprung, whether continent, island, or vineyard. From the day he was expelled from the garden he has wanted a paramount estate—a paradise of his own. To that end all his aspirations have pointed, and, whether Israelite, Goth, or Anglo-Saxon, his mania has ever been the conquest and possession of the earth. He may be honest in all that concerns the money and the movables of another, he may be sinless of even the *desire* for the personalty of his neighbor, but, alas, the allodium of his brother puts too great a strain upon his virtue; his nature breaks down under the temptation. And thus it is that the spacious and fertile acres of the Cherokees are destined, through the devices of the white man, to pass into other hands.

The Nation now numbers about twenty-eight thousand souls, consisting of pure and mixed-blood Cherokees, of whites who have intermarried with them, of other tribes absorbed by them, and of negroes who, though socially distinct, have acquired civil rights under their government. Although so composite in character, this people has, for years, been daily becoming more homogeneous in all that appertains to its national life.

Notwithstanding the faults, the failures, and the infirmities of the Cherokee Nation, it may be said to have achieved a splendid victory over the calamities that have, for a hundred years, decimated its numbers and imperiled its life; and history will record that the Cherokee, in his individual progress, has demonstrated "the capability of the American Indian, under favorable conditions, to realize in a high degree the possibilities of Anglo-Saxon civilization."

JOTTINGS FROM THE OLD JOURNAL OF LITTLETON
FOWLER.

WITH BIOGRAPHICAL INTRODUCTION.

DORA FOWLER ARTHUR.

[The authorities consulted are: Redford's "Methodism in Kentucky," McFerrin's "Methodism in Tennessee," Thrall's "Methodism in Texas," and old diaries and letters of the missionary.]

Littleton Fowler was born in Smith county, Tennessee, September 12, 1802. His father was Godfrey Fowler, of a sturdy old English family of Wake county, North Carolina, and his mother was Clara Wright, of an equally respectable family of Tennessee.

In 1806, his parents, with their small family of four boys, moved to Caldwell county, Kentucky, and located near Princeton. Here the old Fowler homestead is still known to this day and generation, as is also known the old Fowler homestead, dating back more than a century, near Wake Forest, North Carolina. The family has claimed Methodist preachers ever since the labors of Wesley and Asbury in America, but lawyers, teachers, writers and artists have divided family honors. Mr. Redford says, in his "Methodism in Kentucky:" "One of the sweetest spirits that ever belonged to the Methodist ministry of the West was Littleton Fowler." The following data are from the same source, and from the missionary's old Kentucky diary:

He began to preach in 1820, but his health, which was never robust, became so impaired that he was left without an appointment for a few years. In 1828, we find him in charge of the Bowling Green church; in 1829, he was the co-laborer at Louisville of H. H. Kavanaugh, who was later bishop. Here his health again failed him, and he was given an easier work, Cynthiana Station, and later Maysville.

At a subsequent date he was transferred to the Tennessee Conference, and stationed at Tuscumbia, Alabama. In 1833, he was made financial agent of La Grange College, Alabama, which office

he filled for four years, traveling over the Southern States in the interest of this foremost Methodist college for the young men of the South. It has been said that he did more for that institution of learning than any other man except its president, Robert Payne, who afterwards became a bishop of the M. E. Church.

Early in 1837, a call was made in the Alabama Conference for volunteers to go as missionaries to the Republic of Texas. A tall, slender, and delicate looking young man of thirty-five years was the first one to volunteer, saying: "Here am I; send me." He was Littleton Fowler. Dr. Martin Ruter, an older minister, and a married man with a large family, then took his stand by the side of the first volunteer. They were immediately joined by Robert Alexander, a hearty frontiersman, who said, "I am both strong and young; let me go."¹

Thrall says, in his "Methodism in Texas": "In the early annals of Methodism in Texas, the name of Littleton Fowler will be forever conspicuous."

Two older brothers, John H., and Wiley P. Fowler, had emigrated to the Spanish province, Texas, as early as 1816, and had joined a party of Tennessee relatives, George and Travis Wright, on Red River. Wiley P. Fowler soon returned to Kentucky to live a long and honorable life as one among the ablest jurists and judges of that proud State. John H. remained on Red River to serve his adopted country in many ways. In 1838, he represented Red River county as senator in the Texas Congress.

Bradford C. Fowler, another brother, was a Red River county volunteer in the Texas Revolution of 1836. He was a young sergeant in Fannin's command, but he was separated while on detail duty from the main command at the time of Fannin's calamitous surrender, so he escaped the subsequent massacre at Goliad. He went to California in 1849, to seek gold, but he found a grave instead.

Andrew J. Fowler—familiarily known as "Jack Fowler"—followed his missionary brother to Texas, in 1837, to hold many positions of trust during old Republic days and through her early state-

¹These facts have been related in the family circle by the widow of Littleton Fowler, and by A. J. Fowler, the youngest brother of the Texas missionary, who once contributed the same to the Texas Christian (Methodist) Advocate.

hood. He served Lamar county as Representative in the lower house of the Texas Congress in 1840-41. When the shadow of the Civil War fell on Texas, the two surviving Fowler brothers, Col. John H., and Judge "Jack" Fowler, were staunch Union men and Henry Clay Whigs; and although the younger one, my father, went to the front as lieutenant colonel of Bass's Texas Regiment of cavalry, he never again adjusted himself to the dominating political conditions of his adopted State.

With this introduction of Littleton Fowler and his brothers, in their early connection with Texas history, I quote the following from the Memoir of Littleton Fowler, written by Hon. Frank B. Sexton, of San Augustine, now an aged and honored lawyer of El Paso, Texas—and published in the Southern Quarterly Review, 1861, with the accompanying explanation by the editor: "The name of Rev. Littleton Fowler was inserted in the programme of the 'Biographical Sketches of Eminent Itinerant Ministers, distinguished for the most part as pioneers of Methodism within the bounds of the M. E. Church, South,' but the sketch of that excellent man did not reach us in time for insertion in that volume. * * * Having been for several years associated with him in the Texas Conference, our acquaintance beginning with the organization of that body in 1840, it affords us great personal gratification to insert this interesting monograph in the Quarterly, though it is not a Review article."

Mr. Sexton says: "My first recollections of the Rev. Littleton Fowler are these of my early boyhood. He was my father's intimate and valued friend. * * * I distinctly remember, when he was one of our family group, that I was often impressed with his great capacity for entertaining and interesting the social circle. He was easy and versatile, oftentimes humorous, and generally instructive, and always received attention without compelling it. When Mr. Fowler came to Texas, 1837, the Republic was then a comparative wilderness. Many of his ministerial appointments were separated by a distance of several days' journey, which often had to be traveled alone and without reference to weather or accommodations of comfort. He had often to sleep on the ground, with no companion but his horse. Frequently it was necessary for him to leave the ordinary roads, or 'Indian trails,' to avoid meeting treacherous Indians.

"His appointments were regularly filled, whether few or many came out to hear him. He was as ready to dispense the Word of Life to two or three gathered together in the wilderness of Texas as he had been to the hundreds in the spacious churches of Kentucky, Tennessee, and Alabama. He could pray as earnestly for the solitary sinner whom he met by the wayside, as for the Senators assembled in the Congress of the infant Republic.

"In stature, Mr. Fowler was about six feet two inches. Apparently inclined to leanness, his frame was compactly knit. * * * He was straight as an Indian; his forehead was high, expansive, and commanding; his eyes dark, brilliant, and when stirred with emotion, full of fire. * * *

"His intellectual powers were of a very high order. His views of every subject were liberal and comprehensive. Though his early education was defective—simply such as the frontier schools of his day afforded—he compensated that by close and untiring application to study after he was admitted to the ministry. All his life he was an ardent student. His style of speaking, both in the pulpit and in the social circle, was rigidly correct, and I was surprised to learn from his own lips that he had never had the benefits of scholastic training, but his attainments were almost entirely self-acquired.

"I have often heard him commence a sermon in the mildest manner; then, warming to his subject, his fine eye would kindle, and his words would enchain every ear, and his sincerity penetrate every heart. If to be able to instruct, to interest, to hold in breathless silence an entire assembly, be oratory, then Littleton Fowler was an orator." * * *

On the 21st of June, 1838, Mr. Fowler was married to Mrs. J. J. Porter, of Nacogdoches, a lady of great beauty of person and many graces of the heart. She was one of the Lockwood sisters, of Newport, Kentucky, who were noted beauties and belles of Louisville, Frankfort and Cincinnati. They were the daughters of an army officer, and she was born in 1806, at Fort Madison, Louisiana—which was near Baton Rouge—while her father was stationed at that frontier military post. Later, her mother, being widowed, married John Cleve Symmes, author of "Symmes' Theory," which made such a stir in the world about 1825.

I have lately read with eager interest, a letter from Boston, of

date 1825, from Anthony Lockwood, the step-son of the lecturer, Symmes. The letter mentioned tells of the large crowds that greeted Captain Symmes nightly in Boston, New York, Philadelphia, and other cities, to hear him lecture on his "Theory of Concentric Spheres," or a hole through the earth, from pole to pole.¹

Miss Missouri Lockwood married Dr. J. J. Porter, in Newport, Kentucky, and came with him to Texas to make their fortune, in 1835. He became a merchant at the old mission village of Nacogdoches, but he soon met an early and shocking death. A large bear had been captured and chained to a tree near the old stone fort. Late at night, Dr. Porter was returning home, when all others were asleep, when he walked into the arms of the powerful beast, and was killed before his cries could bring help. His wife, who had accompanied him to Texas to seek riches, remained, to subsequently marry a missionary, and share with him his many and varied labors, becoming herself the first Protestant woman missionary of Texas.

For years she was his constant companion, traveling on horseback over Indian trails to minister to sick and dying emigrants and settlers, or to help bury the dead. Many a time she fashioned a simple shroud of a sheet, or a curtain, by the light of tallow dip, while her husband helped to nail together a rude coffin for some pioneer who had died in Texas' wilds, far from home and kindred.

This remarkable woman, the exponent of all that was good, beautiful, and true, of native refinement and great culture, possessing rare piety and broad Christian humanity, lived out her life of rich deeds well beloved throughout all East Texas as "Aunt," or "Mother" Woolam, the wife of the venerable Methodist preacher, John C. Woolam. She survived her missionary husband nearly half of a century. Her memory is cherished as something beautiful and precious by all her descendants and kindred. Truly, it was a privilege to know her.

The foregoing facts may seem to be too much of a personal nature, but they belong to a sketch of the missionary and to Texas history; old letters and journals, which establish every proof, are in possession of the author of this sketch.

Quotations from the journals of the missionary are now begun on his departure from Alabama for the mission field of Texas:

¹Published at Cincinnati, 1826.

"Tuscumbia, Ala., August 22, 1837. This day I start for the Republic of Texas, there to labour as a missionary. I have recently been appointed to this work by the Board of Foreign Missions at New York. The impression on my heart and the call to go as a missionary to Texas were as strong and as loud as was my call to the ministry; consequently I go fully expecting the presence and blessings of God. While viewing the labours and privations that await me, my soul is unmoved. Rather do I rejoice that I am accounted worthy to labour and suffer for my blessed Lord; yet the fact of leaving my country, my kindred, my friends, and brethren, fills me with deep sorrow and touching affliction. Rev. Dr. Martin Ruter and Rev. Robert Alexander are to be my co-labourers in the mission field of Texas. * * *

"In Arkansas I engaged John B. Denton, a local preacher, to accompany me to Texas to work in the missionary field. * * * We held a camp-meeting near Clarksville, Red River county, near the first of October. From Clarksville, in the protecting company of three others, we two, with provisions for four days packed on our horses, struck out across Texas for Nacogdoches. We slept in the forest four nights, and arrived at Nacogdoches on October 16, 1837, and preached two sermons. On our way thither we passed the unburied body of a man who had been shot six weeks previously for horse stealing.

"October 19th we reached San Augustine and preached four nights in succession. There I began a subscription for building a church. In less time than two weeks a lot was deeded, \$3500 were subscribed, trustees were appointed, and the building was under written contract to be finished before the first of next September. 'Praise God from whom all blessings flow.'"

This was certainly the church, the laying of the corner-stone of which is written of in an isolated part of the missionary's Kentucky journal. It has often been written that Littleton Fowler set up the first Protestant church in Texas. However that may be, here is quoted the isolated entry mentioned:

"San Augustine, Republic of Texas, January 17, 1837." (The figure seven is evidently wrong, a slip of the pen, and should be eight.) "To-day the corner-stone of a Methodist Episcopal Church was laid at this place, according to the usages of the Masonic Order. Between forty and fifty Masons were present, and from five to

eight hundred people, about one hundred of whom were ladies. Two speeches were delivered, the first by myself, and the second by Gen. T. J. Rusk, in his clear and convincing style. The event was one of moral grandeur. This corner-stone is the first one of a Protestant Church west of the Sabine River. * * * This is only the beginning, the first step of Protestantism that will some day march a grand army to the confines of the Republic of Texas."

During the session of the East Texas Conference, held in Palestine last December (1897), the old bell from this church was presented, as an historic relic, to that Conference, by Mr. Columbus Cartwright, of San Augustine. The son of the missionary, Presiding Elder Littleton Morris Fowler, and a grandson, Ellis Smith, preacher in charge of Jefferson Station, were requested to convey the bell to the altar, and there ring out its old voice in memory of early Methodism in Texas.

The presentation speech was made by Presiding Elder Thomas J. Smith. The son of the missionary was requested to give the speaker historic data relating to the old bell, but he deferred to the author of this sketch. A few days later, great was my amazement to see the bell presentation written up in the Galveston News, with the startling assertion that this old bell was first rung on the day of the laying of the corner-stone. I met the News correspondent a few hours later, and I told him I was "so glad to learn when the old bell of the first Methodist Church in Texas was rung for the first time." All the light I had on the subject was a letter from Judge W. P. Fowler, of Kentucky—about 1840—saying that the First Methodist Church of Louisville, which the missionary had served as pastor, would send him its first bell for his first Texas church. The News correspondent replied that nobody said when it was rung for the first time in Texas, so he "fixed it up that way." Thus is much of our history writ.

Again, quotations from the old journal are resumed:

"On the night of the 14th, November, 1837, I preached in a school house in Washington-on-the-Brazos, to a crowded assembly, with many people standing before the door. Here Mr. Gay gave two lots, 100x120 feet, for a Methodist church. The Baptists have the frame of a church already up here.

"From Washington I traveled (on horseback) to the capital city of Houston. I arrived Sunday morning, November 19th, and

preached in the afternoon to a very large assembly. * * * Here I find much vice, gaming, drunkenness, and profanity the commonest. The town is ten months old, and has 800 inhabitants; also many stores, and any number of *doggeries*." Note the old-time Texan word.

"November 21st. To-day the Senate of the Texas Congress elected me Chaplain, to serve the rest of the session. It is my prayer that this act of the Upper House may prove an open door for the entrance of the Gospel into the new Republic. I pray that God will give me grace, keep me humble, and make me faithful in the discharge of my religious duties.

"Nov. 24th. To-day I have been listening to the trial of S. Rhoads Fisher, Secretary of the Texas Navy, in the Senate Chamber. He stands impeached by President Houston. Gray and Kaufman are the counsel for the prosecution. Ex-President Burnet and General Rusk for the defense. Gray opened the trial by the reading of documents for two hours and one-half. He was followed by Burnet at some length and with much bitterness towards the Chief Executive; his speech disclosed a burning hatred for the President. Rusk spoke in a manly style, that was clear, forcible, and full of common sense—the best kind of earthly knowledge.

"Nov. 25th. The trial of Mr. Fisher was continued to-day by Mr. John Wharton, in a most furious tirade against President Houston; it was the bitterest invective I ever heard uttered by man. He was followed by Mr. Kaufman, who was quite respectful to Mr. Fisher; his whole speech was fair and well taken.

"Nov. 26th. I preached morning and night in the *capitol*, to large and respectful assemblies. * * *

"Nov. 27th. Steamboat arrived to-day with 103 passengers from the United States. * * *

"Nov. 28th. The Senate is in secret session on the case of Fisher. * * * I gave one dollar for one-half pound of bacon for a poor, sick, and hungry man." * * *

Here occurs a break in the record, caused by the serious illness of the recorder. After two weeks, the journal resumes:

"Dec. 12th. Many have been my temptations since coming here, but, thank God, they have been overcome. I have lived near to God by prayer, preaching, visiting the sick and dying, and burying the dead. * * *

"Dec. 19th. Congress adjourned to-day.

"Dec. 21st. This morning I leave for San Augustine. I have obtained a deed to a lot in Houston for a house of public worship. It is situated near the capitol, and is 125 feet long and 250 feet wide."

Thrall's "Methodism in Texas" says: "During the time he—L. F.—was in Houston, he received from the Messrs. Allen, a title to half a block of ground, upon which the church and the parsonage in that city now stand."—1872.

His journal tells also of his negotiations for church lots, and the erection of church buildings in Nacogdoches and Marshall, in addition to the churches of San Augustine, New Washington, Houston, and other places.

As the records between are of church work alone, entries made at Houston during the spring session of Congress, are again resumed:

"April 5, 1838. I left Nacogdoches in company of Generals Rusk and Douglass, and Drs. Rowlett and Richardson, for Houston, where we arrived on the 12th, after six days of travel over good roads in fair weather. We found Houston much improved and improving. There is much building and a great increase in population. The Senate had organized when I arrived, and the Rev. Mr. William Y. Allen, a Presbyterian minister, had been appointed Chaplain *pro tem*. He impresses me as a man of piety. Rev. Mr. Newell was invited by the Speaker to so serve the House. Mr. N. is an Episcopal minister, who is said to be engaged in writing a history of Texas."

In a private letter, dated April 21st, Mr. Fowler speaks more freely of the chaplaincy, as follows: "Two days ago there was held an election in the House for Chaplain. The result showed one blank, four votes for Mr. Newell, fourteen for Mr. Allen, and seven by way of burlesque for an apostate Catholic priest of San Antonio. Had they so handled the sacred office in the Senate, they could have done their own praying so far as I was concerned, for I would not have served them."

"Sunday, April 14th. I preached morning and afternoon in the Capitol, Mr. Allen at night. There were large gatherings at all three services.

"April 16th. To-night I attended the assembly of the Grand Lodge in the Senate Chamber. There were about forty (40) members present, and much decorum was observed by the fraternity."

Here is quoted a paragraph from the memoir by Mr. Sexton:

"Mr. Fowler was a zealous and active member of the Ancient and Honorable Order of Free and Accepted Masons. Here, as elsewhere, he merited and received the confidence and attachment of his brethren. He was the first Grand Chaplain of the Grand Lodge of Texas, and was present at its organization. The records of the Grand Lodge still exhibit his name as one of its original members."

"April 23rd. I was invited to dine with President Houston, but declined on account of indisposition and for other reasons. He had about a dozen friends attendant on his hospitality."

Again the private letter of date 21st April is quoted from: "To-day is the second anniversary of the battle of San Jacinto, and a fine time for 'Big Bugs' to get drunk without reproach. Happy am I to say that my friend and brother, General Rusk, is much reformed. Last night a splendid ball was given at the hotel. About fifty ladies, and two hundred or three hundred *gentlemen* were in attendance. I enclose a ball invitation which may afford you some amusement to see how such things are done in the Capital of the Republic. Please do not infer from this that I am partial to such assemblies."

One more incident copied from his journal, and a letter dated May 14th. "So soon as I recovered from my serious illness I took a trip to Galveston Island with the President and the members of Congress, and saw *great* men in *high* life. If what I saw and heard were a fair representation, may God keep me from such scenes in future. * * * The island is destitute of timber, but seems to be quite healthy. We were most hospitably entertained. It is destined to be the chief point of commercial importance, perhaps the chief city of Texas. On our return on Sunday afternoon, about one-half on board got mildly drunk and stripped themselves to their linen and pantaloons. Their Bacchanalian revels and blood-curdling profanity made the pleasure boat a floating hell. The excursion to me was one of pain and not pleasure. I relapsed from this trip and was brought near to the valley of death."

After the marriage of Mr. Fowler that spring, 1838, he continued to reside in Nacogdoches and San Augustine for several

years. Later he placed his family, consisting of his wife, two children, Mary and Littleton, and his stepson, Symmes Porter, on his farm in Sabine county. For their protection during his many and prolonged absences, he engaged an illiterate but aspiring and worthy young man, John C. Woolam, promising Mr. Woolam a home and an education in return. He was the same friend to whose keeping Mr. Fowler gave his family when he was dying. So worthy of the trust confided to him did Mr. Woolam prove, that he became, in the course of time, a husband to the widow and a father to the orphans of the distinguished preacher, whose memory he never ceased to revere "e'en down to old age." Father Woolam was a noble man.

Mr. Fowler held responsible positions in his church till his death. After the death of Dr. Ruter in the spring of 1838, Mr. Fowler succeeded him as Superintendent of the Texas Mission till the organization of the Texas Conference in 1840. He was then made presiding elder of the East Texas district, which embraces Texas territory between Red River and the Gulf of Mexico and the Sabine and Trinity rivers.

For nine years Mr. Fowler represented the Texas work in the general conferences of the United States. So stirring were his appeals at those assemblies for co-laborers in Texas, that many young men responded to the call, and came out in small companies, to die of Texas malaria while preaching the Word of God to the Texas pioneers.

Mr. Fowler was co-delegate with a Mr. Clark, of Austin, to the General Conference, held in Philadelphia in 1844, memorable for the division of the Methodist Church into North and South. Mr. Clark took his stand with the Abolition party, while Mr. Fowler voted with the Southern delegation. His letters to his wife during that troubled session show great anguish of spirit, for he sadly deplored the wrathful separation.

He, with his beloved co-worker, Robert Alexander, was the moving spirit in the founding of Rutgersville College, 1838, in memory of the great and lamented Dr. Ruter. He founded Wesley College, at San Augustine, 1842, and made his brother, Jack Fowler, professor of mathematics and ancient languages in that institution. Fowler Institute, of Henderson, Rusk county, 1851, was so named

in memory of Littleton Fowler, and many men of middle life to-day got their education at that East Texas school.

Littleton Fowler died at his home in Sabine county, January 19, 1846, at the comparatively early age of forty-four years. This soldier of the cross is fifty years dead and forgotten by his beloved Texas, but his reward is where noble deeds are never forgotten. His bones lie under the pulpit of McMahan Chapel, which stands in a sequestered spot twelve miles east of San Augustine, in Sabine county. There was where he organized his first Methodist "society" in Texas. Another building has taken the place of the old log church of his burial, but his grave has been undisturbed this half century. A marble slab against the wall bears this inscription:

"Sacred to the Memory of Rev. Littleton Fowler, Methodist Missionary to the Republic of Texas; Kentucky was his beloved State; Texas his adopted country; Heaven is his eternal Home."

With one more quotation—this time from Mr. Thrall, who knew the missionary personally—this sketch closes: "In forming an estimate of the character of Littleton Fowler, the first thing that strikes one is his perfect symmetry. His fine physical form furnished a fitting tenement for his noble mental traits. In his manner, dignity and affability were beautifully blended. He had a most benevolent expression of countenance, a keen, piercing eye, and a musical, ringing voice. His mind was well cultivated; his religious experience was cheerful; his convictions of the truth and the power of the gospel were remarkably strong. He was the very man for Texas, and when he died, Texas Methodism went in mourning. He was buried under the pulpit of his home church, where he had so often stood as a Christian ambassador."

BOOK REVIEWS.

The Government of the People of the State of Texas. By George Pierce Garrison, Ph. D., Professor of History, University of Texas. Philadelphia: Eldredge and Brother. 1898. Pp. 160.

That education is the guaranty of good government is almost axiomatic. That instruction should have a direct reference to the duties of citizenship begins to be recognized. Knowledge of general principles of political economy and of the broad outlines of constitutional law is no longer considered ample equipment for the citizen. He is of the government. It is his duty and right to know its workings.

In his "Civil Government of Texas," Dr. Garrison has performed a most valuable service to the cause of education in the State, and has furnished a model to be followed in other States. The book is designed for use in the public schools, and is admirably adapted to that purpose; few people are, however, so well informed concerning the history of Texas, and the details of her government, that a careful study would be without profit to them.

The suggestive preface is followed by a short historical sketch of Texas. This part of the work shows great discrimination in the selection of material, and excellent taste and judgment in its disposition.

The body of the book is devoted to an exposition of the government of Texas. An outline of all the departments and divisions and agencies of the State is given, and their several functions are defined. Concise statements are made concerning the duties of State, county, and municipal officers. The duties and privileges of citizenship are set forth, the more general principles of administrative law are mentioned, and attention is directed to some of the characteristic features of Texas jurisprudence. Nothing appears to be omitted which would seem properly to belong to such an outline.

The whole is concisely, clearly, and accurately stated and logically arranged. The author suggests in his preface that the purpose kept steadily in view had been to give "a description of the origin and growth of the State of Texas and the present working of its

government, that shall be both easily understood and also, in a manner at least, logical and scientific in its arrangement." The author, the teacher, and the student are to be congratulated upon the excellent manner in which this purpose has been accomplished. A Texan proud of the history and the institutions of his State can but entertain and express the hope that Dr. Garrison's work will find its way into all the school houses of Texas.

R. L. BATTS.

Batts' Annotated Revised Civil Statutes of Texas. By R. L. Batts, Professor of Law, University of Texas. Vol. I. Austin, Texas: Eugene Von Boeckmann Publishing Company. Pp. xv-1164.

During the existence of Texas as a government, there have been numerous and radical changes in her constitutional and statutory law. In many respects, her jurisprudence is peculiar, and these peculiarities can be learned nowhere except in her own enactments and decisions. Elementary works and decisions of courts of other jurisdictions are, of course, helpful, but the Texas lawyer must get his information from the Constitution, statutes, and decisions of Texas. These are becoming very numerous. Since Texas ceased to be a Mexican province she has had seven constitutions, and several of these have been frequently amended. Her statutes are changed every two years, and the decisions of her seven courts of appellate jurisdiction are accumulating with a rapidity that taxes the energy of the most enthusiastic to keep pace with them. The volumes of reports comprise six series, some with few volumes, but others approaching a hundred in number. From this it is manifest that any book which serves as a tie to bind this mass of original matter together, and at the same time offers an intelligent key to its contents, and lightens the labor in comparing its several parts, and understanding them collectively and separately, must be very valuable to all persons interested in Texas law. This task has been undertaken and most creditably performed by Hon. R. L. Batts, Professor of Law in the University of Texas, in the preparation of his *Annotated Civil Statutes of Texas*. The work comprises all the present constitutional and statutory law, arranged topically in alphabetical order, as in the *Revised Statutes*. Each topic is treated

historically. That is, every article of the Constitution and every Statute is given as it is, and in notes are given references to every prior statute on the subject, with date of its adoption and its substance, and in more important matters, the prior law is quoted. In addition, under each section are notes referring to all the decisions on the subject embraced in it. These notes are carefully prepared, and are accurate and short, presenting the real gist of the case in a few clear words. None of these cases are taken or cited from other digests, or even from the syllabi of the reports, except in a few unimportant cases, on points which have been fully covered. In all other instances, the text of the decision has been examined and the note made from it. So thoroughly and intelligently is the work done, that in the text and references to former constitutions, and statutes, and quotations from them, and in the notes and citations of the decisions, it may be truthfully said that all the Texas law, on any subject, is brought together in a form easily accessible and quickly covered, and full opportunity for intelligent comparison and study is afforded. There has been no digest work in Texas since the death of Judge Paschal which, in my judgment, is equal to it.

JOHN C. TOWNES.

A Comprehensive History of Texas, 1685 to 1897. Edited by Dudley G. Wooten. In two volumes. Dallas: William G. Scarff. 1898.

This history is often called the "New Yoakum." On account of the magnitude of the work, and the interest attaching to it, the Table of Contents is, with the exception of matter explanatory of the titles, given in full:

CONTENTS OF VOLUME I.

PART I.

History of Texas, 1685-1845.....By *Henderson Yoakum*.¹

¹This is a reproduction of the text of Yoakum's History of Texas, with new notes.

PART II.¹

CHAPTER.

- I. Sketches of Moses Austin, and Stephen F. Austin, with an Account of Their Colonial Enterprises.....By *Guy M. Bryan*.
- II. The Plan, Progress, and Government of Austin's Colonies.
By *Guy M. Bryan*.
- III. Official Documents, Laws, Decrees, and Regulations Pertaining to Austin's Colonies.....By *Guy M. Bryan*.
- IV. Stephen F. Austin's Influence in Mexico, Captivity there, Return to Texas, and Reception by His Colonists....By *Guy M. Bryan*.
- V. The Fredonian War in Edward's Colony, 1826-1827.
By *Guy M. Bryan*.
- VI. The Campaign of the Texan Army in 1835, Under Austin and Burleson, Ending in the Capture of Bexar.
By *Guy M. Bryan*.
- VII. Reports, Letters, and Speeches of Stephen F. Austin, Giving His Views on Independence in 1835-1836.
Compiled by *Guy M. Bryan*.
- VIII. Austin and Williams' Colony—Robertson's Colony—Last Days, and Public and Private Character of S. F. Austin.
By *Guy M. Bryan*.
- IX. Mode of Living, Customs, and Perils of the Early Settlers of Texas.
By *Guy M. Bryan*.
- X. Fannin at Goliad—Battle of the Coleta—Massacre of Fannin and His Men.....By *Dr. J. H. Bernard*, an eye-witness.
- XI. The Siege and Fall of the Alamo.....By *Seth Shepard*.
- XII. The Women of Pioneer Days in Texas—Domestic and Social Life in the Period of the Colonies, the Revolution, and the Republic.
By *Mrs. M. Looscan*.
- XIII. The "Runaway Scrape," 1836.....By *Mrs. Kate Scurry Terrell*.
- XIV. The Annexation of Texas to the United States.
By *Sam Bell Maxey*.
- XV. The Mexican War, 1845-1848.....By *Sam Bell Maxey*.
- XVI. The History and Evolution of the Texas Flag.
By *Mrs. M. Looscan*.
- XVII. Tombs and Monuments of Noted Texans.....By *Mrs. M. Looscan*.
- XVIII. The Indian Tribes of Texas.....By *M. M. Kenney*.
- XIX. The Land System of Texas: *Part I.* Spanish and Mexican Titles to Land in Texas. *Part II.* Land Titles, Policy and Legislation of the Republic and State of Texas, 1835-1894.
By *Dudley G. Wooten*.

¹This consists of "special chapters, embracing topics not adequately treated by Yoakum. * * *"

CONTENTS OF VOLUME II.

PART III.

The Political, Legislative, and Judicial History of Texas for its Fifty Years of Statehood, 1845-1895.....By *Ex-Governor Oran M. Roberts.*

PART IV.¹

CHAPTER.

- I. History of the Texas Rangers.....By *Gen. W. H. King.*
- II. History of the Texas Press.....By *A. C. Gray.*
- III. History of the Education System of Texas.....By *J. J. Lane.*
- IV. The Physical Geography, Geology, and Natural Resources of Texas.
By *E. T. Dumble.*

PART V.

Texas and the Texans in the Civil War.....By *C. I. Evans.*

CHAPTER.

- I. Military Events and Operations in Texas Along the Coast and Border, 1861-1865.
- II. Service of Texas Troops in the Armies of the Confederate States.
- III. Hood's Texas Brigade.....By *Mrs. A. V. Winkler.*
- IV. Terry's Texas Rangers.....By *Mrs. Kate Scurry Terrell.*
- V. History of Green's Brigade.....By *J. H. McLeary.*
- VI. Notes on Granbury's Brigade.....By *O. P. Bowser.*

PART VI.

The Results of Fifty Years of Progress in Texas.

By the Editor, *Dudley G. Wooten.*

Considering its conglomerate character, this work is something more than a history in the ordinary acceptation of the term. Its basis, however, is the exact text of Yoakum, minus the matter in appendix. The addenda to Yoakum, bringing the history down to the present time, are on two lines—the civil by Ex-Governor

¹Consisting of "Supplemental Chapters, Covering New Matter."

Roberts, and the military by C. I. Evans, with a closing paper on the whole work by the editor. Thus the proper historical continuity has been preserved, and all the other supplemental matter may be regarded as so many side-lights thrown upon the main subject.

The dedication is to The Daughters of the Republic of Texas. The character and scope of the work are well indicated in the publisher's preface.

Col. A. T. McKinney's preliminary sketch of the author is doubtless welcomed by the public, who know curiously little of Henderson Yoakum. Even well-informed Texans will be rather surprised to learn that before leaving his native Tennessee, Henderson Yoakum was considered a great lawyer, had been a member of the State Senate, and had attained in the army the rank of colonel, and commanded a regiment in an Indian campaign.

Judge Seth Shepard's introduction, touching on every phase of Texan development, is an admirable summary of the whole work.

In the preparation of his work, Mr. Yoakum did not have access to any respectable collection of documents bearing on our earliest history; for in the fifties none existed in the State. From his scant and faulty treatment of the Franciscan missions, it is to be inferred that he made but little use of the valuable mass of Spanish MSS. then in the archives of Nacogdoches and Bexar. For want of better authorities on our early history, ecclesiastical and secular, Mr. Yoakum resorted almost exclusively to the Spanish diplomatic documents in the American state papers, and he did not always intelligently construe these.

He could not, for want of the proper documents, begin further back than 1685, and even then he was much hampered for authorities to present clearly the struggle between France and Spain for dominion in Texas. The sale of Louisiana to the United States in 1803, followed by an influx of Americans, paved the way for diplomatic intrigue and military incursions into Texas. Thanks to the jealous Spaniard and enterprising Yankee, there is henceforth no lack of material for history. In this period of the filibusters, ending in 1821, Yoakum's outline assumes more the fullness of history, enlivened with many well-told, exciting adventures. It is not, however, till the period of American colonization that the author appears in full sympathy with his subject, as he graphically

portrays the labors of Austin and his colonists in laying the foundations of our mighty commonwealth.

Then ensues, in the reviewer's opinion, the best part of Yoakum's work, with its well-told story of the life of the Republic, ending abruptly with annexation in 1845.

The new notes on Yoakum do not begin till 1831. They seem to be entirely trustworthy, made up as they are from the unpublished MSS. of Col. F. W. Johnson and from the contributions of Moses Austin Bryan and Col. Guy M. Bryan, giving "the other side," never before published, on many disputed points of our history. These notes are very valuable, and will probably stimulate further inquiry for the truth.

Colonel De Bow thus noticed Yoakum's History of Texas on its first appearance: "Mr. Yoakum seems to have collected with great care all the existing material, with much that has never yet appeared in print. All contemporary accounts, personal narratives, private correspondence, individual reminiscences, newspaper statements, and official documents are called into requisition. The work, though wanting in system and condensed expression, is still of very great interest and value, and is deserving of general study. The author was evidently an enthusiastic admirer of General Houston.¹

While approving this criticism, I would also state that "Yoakum," with whatever defects it may have, is the accepted standard of authority to-day, having more merit than any other history of the State ever written by a Texan.

The author of the continuation of the history on its main line was a lifelong lawyer, and had been successively a colonel in the Confederate army, Chief Justice of our Supreme Court, and Governor of the State. Besides this, he was an ardent secessionist and an honest doctrinaire of the Calhoun school of State Rights politics. He has, however, given the public the most impartial history of Texas for the period covered that has ever been written.

Beginning with a striking picture of scenes attendant on the demise of the Republic and on the inauguration of the first Governor of Texas in the Union, the author patiently goes through every administration, noticing public events according to his estimate of their importance, and giving fairly both sides of every dis-

¹De Bow's Review, September, 1857.

puted question. The many public documents, with proceedings of political conventions, the courts, and the Legislature, given in the work, add greatly to its value. All public questions are fearlessly met and treated with judicial fairness.

Perhaps the best part of Roberts' history is that which relates to the disruption and reconstruction of the Union. The author's mental bias and legal training peculiarly fitted him for the task. The rise, progress, and consummation of the secession movement in Texas are described with the calmness and impartiality of a well-trained jurist. This is the more remarkable, as the author was one of the prime movers of secession and the president of the Secession Convention. In narrating the events of those exciting times, he never loses his dignity or his sense of fairness towards Houston and other Unionists. But reconstruction was the hideous nightmare worse than war for Texas. The exasperating events of this period are given without loss of temper, but the tyranny of the Davis administration does not escape recital and the proper condemnation. The period succeeding the restoration of Democratic supremacy in the State government has been an unbroken rule of peace and progress, and the author records with becoming pride these triumphs of popular rule.

"History," said a great thinker, "is philosophy teaching by example." The Old Alcalde does not content himself with a faithful narrative, but often probes for the philosophy of events. His style is plain and unpretending, without ornament, and without close adherence to the accepted canons of history-writing; but the sincerity of the author is reflected on every page; and, whether we agree with his conclusions or not, we are bound to recognize his impartiality, his patriotism, and his imperturbable common-sense.

In conclusion, the first thing noticeable about this work is its immense size—two royal octavo volumes, of nearly 1800 pages. Reduced to a 12mo in size of page, it would contain thirty volumes. The next thing to attract attention is the great variety of subjects treated. But the line of history is clear and unbroken through Yoakum and Roberts from 1685 to 1895. The size of the work is no disparagement, but rather a guaranty of extraordinary scope and comprehensiveness. The monographs, however seemingly diverse, are all germane to the text. It will be borne in mind that Justin

Winsor constructed his Narrative and Critical History of North America on the same plan. This plan has its merits and demerits. It throws greater labor upon the editor to have the proper harmony, while it tends to secure better work on any special topic; and the rule, as I take it, holds good as to the excellence of the monographs in these volumes. Certainly it would be hard to find a more respectable array of well-known Texas writers than the contributors to the Comprehensive History.

A gem in typography and mechanical finish, this history is a vast picture gallery, with its hundreds of portraits, never before published, of famous men and women of Texas.

If a man were to be restricted to one book on Texas, I would advise him to get Scarff's "Comprehensive History," as it makes, in itself, a good library on Texas. The citation of authorities at the proper places would have added much to the value of the work.

The editing of such a comprehensive work, with its many monographs, must have been an arduous task, requiring critical taste, mental equipoise, and thorough acquaintance with the subject in all its details, to say nothing of patient industry and common-sense. From the excellence of the editorial work apparent on its face, it may be inferred that Mr. Wooten, the editor, possessed all these qualifications in an eminent degree. Both editor and publisher are to be congratulated on the production of these volumes.

C. W. RAINES.

NOTES AND FRAGMENTS.

Mr. W. R. Smith, who holds a fellowship in history for the year 1898-9 from Columbia University, will work on the colonial history of South Carolina. He expects to go to Columbia about the first of August, in order to begin work.

Mr. W. F. McCaleb, who was mentioned in *THE QUARTERLY* for April as having been awarded a traveling fellowship by the University of Chicago, is now in Mexico. Mr. I. J. Cox, of the San Antonio Academy, will work with him during the summer. Their ultimate destination is the City of Mexico, where Mr. McCaleb expects to spend most of the year, but it is their intention to make stops more or less lengthy at other places in which there are archives of value for the history of the Southwest, especially at Chihuahua, Saltillo, and Querétaro. They are traveling on bicycles, and will doubtless learn much of Mexico as it is, as well as of Southwestern history, before their return to Texas.

Mr. L. G. Bugbee is spending his vacation at work in the Bexar archives at San Antonio. These archives include a very large amount of material for the history of Texas previous to the Revolution, of which but little use has hitherto been made. Perhaps *THE QUARTERLY* will be able, before very much longer, to publish a sufficient description of them to show the nature and value of their contents.

Professor Garrison has announced as the subject of the graduate course in history in the State University for 1898-9, "The Texas Revolution." It is his intention to spend the summer in gathering

and classifying materials for this course. He hopes to work several weeks in the collection of Col. Guy M. Bryan, at Quintana, and the remainder of the vacation in the State library. Any one having in his possession unpublished material relative to this period of Texas history will confer a great favor upon Professor Garrison by informing him of the fact and describing the documents, and especially by giving him an opportunity to use and copy them. Official papers, diaries, private letters, and various other kinds of documents are all useful in historical investigation. The citizens of Texas are certainly much interested in determining the true history of the State. They ought, therefore, to give those who undertake this work in the University all possible help.

The readers of *THE QUARTERLY* will be grieved to hear of the death of Miss Brownie Ponton, which occurred at Muscogee, Indian Territory, July 10. She was spending the summer with relatives, when she was stricken with illness, which, after about ten days, resulted in her death.

Miss Ponton had just completed her junior year at the University of Texas. She was an excellent student, and showed special aptness for historical investigation. The paper on Cabeça de Vaca's Wanderings in Texas, which was prepared by herself and Mr. Bates H. McFarland, working jointly, and was read at the last midwinter meeting of the Association, and published in *THE QUARTERLY* for January, attracted much attention, and elicited favorable comment from a number of experts, together with a very inconsiderate and unjust sneer from one who seems to have the public confidence, but who must have misunderstood the real import of the article. She gave promise of becoming an elegant and forcible writer, as well as a successful investigator; but the pen has fallen from her grasp, and her work is done.

The collection of Ex-Governor Roberts, one of the most valuable relating to Texas history ever gathered, is bequeathed to the State University, in which he was so greatly interested, and for which

he has done so much. The best part of his collection is in manuscript, and consists of a diary kept by the testator from 1858 to 1865, together with an extensive and carefully preserved correspondence with most of the men who have been prominent in Texas during the last sixty years. The Roberts Papers are a treasure, and will doubtless be treated as such by the University authorities.

The death, by an unfortunate accident, of Col. J. K. Holland, a few weeks since, takes from the State one of its prominent historical characters. He came to Texas during the early days of the Republic; was a member of the House of Representatives, and of the Senate, subsequent to annexation and previous to the Civil War; was on intimate terms with most of the well-known public men of the Republic and the State; and has been, in various ways, identified with the history of Texas through both periods. He took great interest in the Association, and it has been placed under obligations to him for many favors.

DAVID SHELBY.—The name given in Baker's Texas Scrap-Book, in the list of the "Old Three Hundred," as David Shelly, should be David Shelby. It is correctly printed in the list given by Lester G. Bugbee in *THE QUARTERLY* for October, 1897.

THE ALLEGED ABANDONMENT OF CHILDREN AT PLUM CREEK.—In justice to our comrades who have passed away, we beg leave, as three participants in the battle of Plum Creek, with the Indians, on the 12th day of August, 1840, to emphatically deny a report which had been circulated and published, to the effect that after the battle of Plum Creek, there were thirty-three children, whose parents were murdered in the Indian raid down the Guadalupe, left on the battlefield and gathered up and taken to San Antonio by the Sisters of Charity of that place and raised and educated by them.

We regret exceedingly that this report has been circulated, as it is a reflection on the old Texans, and would be a blot on Texas' history.

A. J. BERRY,
ROBERT HALL,
J. W. DARLINGTON.

CONCERNING SAINT-DENIS.—The Mission San Juan Bautista, situated on the small stream called Costaños, about six miles west of the Rio Grande, and about twenty-five miles below Piedras Negras, now Ciudad Porfirio Diaz, was first founded in 1699, some distance from where it now stands; but, being abandoned by the tribes first settled there, it was re-established where it now stands in 1701. In the same year, the Conde Valladores made the place a presidio, with the name of Presidio de San Juan, Bautista putting there a small garrison of Spanish troops. And from that time it has maintained its existence in the same place, though its name was changed by an act of the State Congress of May 18, 1835, to Villa de Guerro; yet it is generally known as Presidio Rio Grande.

The mission building, now the cathedral of the place, has been well preserved, and may still contain the early archives relating to the mission, including the marriage of Saint-Denis to the niece of Captain Ramon.

The accusation of Saint-Denis, his trial, acquittal, its approval by the Viceroy, and the revocation and his condemnation as a spy by the Consejo de Indias, and final sentence to imprisonment, with his wife, in Guatemala, may also be found in the Archivo General at Mexico.

The famous *Acordada*, where Arnuto Arroyo was killed on the night of the sixteenth of September last, after his attempt to assassinate Porfirio Diaz, is the same in which Saint-Denis was confined for some time, and his name may possibly be found on the roster, with a note of his sentence, and when he was taken away for Guatemala. This prison stands on the west side of the great square, south of the principal cathedral, commonly called el Zocalo, on account of the Aztec Zocalo standing there, and generally be-

lieved to be the place where human beings were formerly sacrificed to the Aztec god of war.

Much of the real facts of early Texas history may be found in the General Archive, among the various reports of the Spanish officers who were here in different capacities; but hitherto there has not been any considerable interest manifested in such sources of knowledge of the past of a country now reckoned among the greatest States of the American Union. Not even the chart of the Gulf Coast, from Cape Florida to Pánuco, made by two mariners, sent out by the King, in 1540, has been copied into the archives of Texas; and the cavalry expedition of Captain Sancho Caniegas, in 1528, from Pánuco to forty leagues north of the mouth of the Rio Grande, possibly to the point now known as Flour Bluff, has been overlooked by our historians, though the report of it has a place in the history of New Spain, as well as in the "*Noticias Historicas de Nuño Guzman*," who was then governor of the Province of Pánuco.

The archives at Monclova, Saltillo, San Luis Potosi, and Mexico all contain data for Texas history worthy of a place in our records, to enable the future historian to brush away many blunders found in writings extant to-day; such as that Saint-Denis laid out the old San Antonio Road, and the story of the origin and first site of the Presidio "La Bahia del Espiritu Santo," now standing on the right margin of the San Antonio River, and many others of like character.

A properly directed examination of the Republic archives of different places in Mexico, would furnish material for the works of writers of history never yet touched, and show much in its true light that has hitherto been but partially treated; and the advantages to be derived would richly compensate for the labor and money expended in making it.

BETHEL COOPWOOD.

QUESTIONS AND ANSWERS.

MOUND PRAIRIE.—The Mound Prairie referred to by Yoakum and Thrall, and mentioned on page 307 of the April *QUARTERLY* of the Texas State Historical Association as being five and one-half miles west of Alto, was doubtless so designated because of the existence of two ancient Indian mounds on the old San Antonio road, two miles east of the Neches River, and formerly known as the Bradshaw place.

There is a locality which has been known, for at least sixty years, as Mound Prairie, which is situated some six miles northeast of the town of Palestine, in Anderson county, on the old Kickapoo road, and not ten miles west of Palestine, as stated by Mr. Dabney White.

JOHN H. REAGAN.

I should be glad to receive through *THE QUARTERLY*, answers to the following queries:

1. What is the date of an order of Philip II, cited by several writers on Texas history, forbidding any but Spanish ships to enter the Gulf of Mexico? How could this furnish a pretext for capturing La Salle's *St. Francois*, before she had reached the Gulf?

2. Besides the claim which La Salle made in 1682, to all Louisiana, did he make a second formal claim to the region around Ft. St. Louis? Neither Joutel nor Douay, so far as I have noticed, mention any second claim.

3. In the translation by French of the proclamation wherein La Salle takes possession of Louisiana, the Mississippi is called the "River Colbert, or Mississippi."¹ Joliet, as quoted by Margry, calls it the "Colbert, ou Mississippi selon les sauvages." Who gave it the name Colbert?

4. In the same document, La Salle mentions by name the tribes along the Mississippi, so far as he knows them; further on he uses

¹Historical Collections of Louisiana, Part I., 49.

the expression: “* * * upon the assurance which we have received from all these nations, that we are the first Europeans who have descended or ascended the said River Colbert.” French, in the History of the Discovery of the Mississippi River, says: “By reading the accounts of the Spanish adventurers, La Salle seems to have been the first to identify the great river of Marquette and Joliet with the great river of De Soto.”¹ If he knew of these early explorations, how could he, in good faith, say that the French were the first Europeans on the river?

5. What was the “Seignelay, or Illinois,” which La Salle mentions in his memoir to M. Seignelay, as a branch of the Colbert, by which he hopes to find his way to the South Sea?

6. When was the name Nuevas Filipenas first applied to Texas? How long was it used?

7. Did St. Denis leave the City of Mexico for San Juan Bautista, before the expedition for reoccupation started, or did he accompany young Ramon?

ELIZABETH H. WEST.

JOHN RICE JONES.—On page 307 of the last number of THE QUARTERLY, Edmond J. P. Schmitt seeks information concerning the John Rice Jones who was Postmaster-General of Texas during, and immediately subsequent to, the Texas Revolution. Through the courtesy of James H. Jones, Esq., Austin, Texas, and of his daughter, Mrs. M. F. Lochridge, I have obtained information concerning the John Rice Jones who is here mentioned, and who was the father of James H. Jones, which enables me to answer as follows:

This John Rice Jones did live at Vincennes, Indiana, in the beginning of this century, but he was then only a boy, having been born at Kaskaskia in 1792. At that time his Christian name was only John, but some time after the death of an older half-brother, Rice, who was murdered by political and personal enemies at Kaskaskia in 1808, he added this more distinctive name to that which he already bore.² The John Rice Jones, however, to whom Mr. Schmitt refers as living at Vincennes early in this century, was, it

¹Historical Collections of Louisiana, Part IV., Preface, page xxxv.

²This is the statement of Mr. James H. Jones, and Mrs. Lochridge.

may be inferred, not the subject of this note, but his father. The latter was very prominent in the early history of Indiana, and later of Missouri, where he was associated with Moses Austin in his mining ventures. He was a member of the first board of trustees of Vincennes University.

From a pamphlet by W. A. Burt Jones, reprinted from Vol. IV., Chicago Historical Society's Collections, and having for the title of one of its parts "John Rice Jones: a Brief Sketch of the Life and Public Career of the First Practicing Lawyer in Illinois,"¹ I quote the following (pp. 33-34) relative to the John Rice Jones inquired about:

"Gen. John Rice Jones, the eldest son,² served under Capt. Henry Dodge in the War of 1812, and removing to Texas, then a Mexican State, as early as 1831, he became identified with its struggles for independence; which gained, he became Postmaster-General under the three forms of the Republic, provisional, *ad interim*, and constitutional—proof enough of his ability and fidelity—in the cabinets of as many of its executives, namely, Governor Henry Smith and Presidents David G. Burnet and Mirabeau B. Lamar, respectively, and was a personal friend of and fellow-patriot with those men and their compeers, Hon. Stephen F. Austin, 'the father of Texas,' and his dearest of friends; Gen. Sam Houston, Col. Wm. B. Travis, Col. James Bowie, Col. David Crockett, Col. Benjamin R. Milam, and many others whose memories are justly dear to the people of Texas, and whose names are as 'familiar in their mouths as household words.' General Jones was one of the two executors of the will of the heroic Col. Travis, the other being ex-Governor Henry Smith.

"Locating in 1831 at San Felipe de Austin, he was one of the first settlers of that place, which, as Austin, is now the capital of the great 'Lone Star State,'³ and for years was one of its prosperous merchants. He died in Fayette county, Texas, on his plantation,

¹This title refers to the father, not to the son, John, who afterwards called himself John Rice. The pamphlet, as well as that quoted further on, was furnished me by Mr. James H. Jones.

²By the second wife.

³This, of course, is a mistake caused by confusing San Felipe de Austin with the city of Austin.

‘Fairland Farm,’ in that eventful year in which the Republic he loved so well had so long and faithfully served ceased to exist on becoming a State of the American Union, 1845; and having married a daughter of Maj. James Hawkins, in Missouri, in 1818, he left a large and respectable family of children to cherish the memory and contemplate with just pride the record of a devoted father and a noble man.”

F. B. Wilkie, in a sketch of Geo. W. Jones, of Dubuque, Iowa,¹ published originally in the *Chicago Times*, and afterwards in the *Iowa Historical Record*, says² of the Texas John Rice Jones that “he was twice Postmaster-General of the Republic of Texas, and later United States Senator, serving in the same session with his brother, the subject of this sketch.”

This is clearly a mistake; Mr. Jones died in 1845, before Texas had a United States Senator.

GEORGE P. GARRISON.

¹Younger brother of John, or John Rice, Jr., himself quite prominent in ante-bellum Northwestern history. He died in 1897.

²*Iowa Historical Record*, p. 434.

AFFAIRS OF THE ASSOCIATION.

Members of the Association have doubtless observed that no index to Volume I. of *THE QUARTERLY* has yet been published. This is no oversight, and is much regretted by the Publication Committee. It is due simply to the fact that up to this time no satisfactory arrangement for indexing has been made. The index will, however, be printed and distributed as early as possible, and it would be well on this account for any one in possession of the volume to delay binding in the meantime. Those who understand the amount of work involved in attending to the publication of *THE QUARTERLY* and other matter issued by the Association, and the demands upon the time of those responsible for it, together with the inadequacy of the Association's income to provide sufficient clerical help, will know how to excuse this annoying failure to bring out the index on time. The Committee is fully aware of the necessity for an index in this age when time is so precious to the investigator, and is resolved that the index for Volume II. shall go out with the last number of that volume.

In this number appear the reports of the treasurer and librarian. The necessary expenditure involved in organizing the Association has been considerable, and it will be possible hereafter to publish much more historical matter with the same income. It is hoped, however, that the available means of the Association will increase constantly. Not until it can begin the work of copying the public and ecclesiastical archives in Mexico can its members claim that it has fairly entered the field which it should cultivate. This can not be until the treasurer can show larger receipts.

The library has begun well and already has grown into a collection of no little value—of much greater, in fact, than the number of volumes and pamphlets would indicate. The gifts of rare materials for Texas history to the Association have been consider-

able, and a good deal more has been promised. The collection may be expected to show more rapid growth for the year just begun.

In the death of Ex-Governor Roberts, the Association has lost a faithful friend and supporter. Though his age prevented him from working as actively for it as some younger members, none showed a deeper interest in its welfare or was more desirous of serving it by all possible means. His last signature was affixed to the circular announcing the second annual meeting. He cherished fondly the hope of the perpetuation and success of the Association. Could he himself have named the way in which his friends might best show their respect for his memory, he would doubtless have suggested such action on their part as would secure the realization of this hope.

Among the more valuable recent gifts to the library of the Association are, a pamphlet by Ashbel Smith, entitled *Reminiscences of the Texas Republic*,¹ presented by Hon. Beauregard Bryan, of Brenham; MS. copies of the original report of Postmaster-General John Rice Jones, to the first Congress of the Republic, and several other official papers of the Postmaster-General, presented by James H. Jones, Esq., of Austin; a collection of MSS., including military correspondence during the first half of the year 1863, and general orders, issued mainly in April and May, 1865, by Gen. Wm. Steele, presented by his daughter, Miss Lily Steele, of San Antonio; a scrap book, with various old Texas newspaper clippings, presented by the widow of Col. J. K. Holland, of Austin; and an interesting old book, entitled *Memorias de la insigne Academia Asnal*, presented by Dr. M. B. Porter, of the State University.

¹Originally read before the Galveston Historical Society, December 15, 1875. It deals mainly with the question of annexation, and gives much history that could hardly be found elsewhere.

Oran Milo Roberts

Chief Justice of Texas, 1864-66 and 1874-78

Governor of the State, 1878-82

Professor of Law in the University of Texas,
1883-92

President of the Texas State Historical Association,
1897-98

Born July 9, 1815

Died May 19, 1898

THE SECOND ANNUAL MEETING.

The second annual meeting of the Association was held at the University building, Austin, June 16th and 17th. The meeting was opened with the address on the life and services of Ex-Governor Roberts, by Hon. Dudley G. Wooten, which appears in this number of *THE QUARTERLY*, as do papers which were read by Ex-Gov. F. R. Lubbock, Dr. V. O. King, Judge John C. Townes, and Mrs. Dora Fowler Arthur. Professor Garrison read a paper on Rutgersville College, by Mrs. Julia Lee Sinks: while others, on the old fort at Anahuac, by Mrs. Adèle B. Looscan; the Pease Administration, by Judge Z. T. Fulmore; and Enduring Laws of the Republic, by Judge C. W. Raines, were read by title. The paper by Mrs. Looscan is also to be found in this number.

At the meeting of the Council, the price of single numbers of *THE QUARTERLY* was fixed at fifty cents, and Mr. L. G. Bugbee was elected business manager for 1898-99.

It was resolved to take steps towards securing recognition for the Association from the State.¹

Drawing for terms on the Council, in accordance with the constitution, took place, with the following results: Of the Fellows, Judge Z. T. Fulmore drew the term ending in 1900, Judge C. W. Raines that ending in 1899, and Ex-Gov. F. R. Lubbock that ending in 1898. The drawing for the members gave them respectively terms ending as follows: Capt. M. M. Kenney, in 1902; Mrs. Bride Neill Taylor, in 1901; Dr. Rufus C. Burleson, in 1900; Prof. R. L. Batts, in 1899; and Mrs. Dora Fowler Arthur, in 1898.

The following nominations were made for the year 1898-9: Dudley G. Wooten, President; Guy M. Bryan, First Vice President; William Corner, Second Vice President; Julia Lee Sinks, Third Vice President; F. R. Lubbock, Fourth Vice President; L. G. Bugbee, Corresponding Secretary and Treasurer.

About one hundred new members were recommended for election.

At the meeting of the Fellows, Judge Seth Shepard, of Washington, D. C., and Capt. M. M. Kenney and Prof. R. L. Batts, of Austin, were elected to membership in that body.

¹This work will be in charge of a committee, to be announced later by the President of the Association.

The Association, at its business meeting, elected the officers nominated by the Council, and filled the vacancies on the Council by electing Prof. R. L. Batts for the Fellowship term ending in 1901; Hon. Beauregard Bryan, of Brenham, for the membership term ending in 1903, and Mrs. Dora Fowler Arthur for the unexpired membership term of Prof. Batts, ending in 1899.

The Association has now completed the first year of its existence, and enters with a hopeful outlook upon the second. The results of the year's experience are highly encouraging. Historical interest has increased throughout Texas, the Association has attracted notice in almost every State in the Union, if not for what it is actually doing, at least for what it aims to do, and its membership now approximates five hundred. If it can secure, as it hopes, the proper recognition from the State, its future is assured.

TREASURER'S REPORT FOR 1897-98.

RECEIPTS.

94 membership dues for year ending March 2, 1898.....	\$188 10
143 " " " " June 17, 1898.....	286 00
60 " " " " December 29, 1898.....	120 00
29 " " " " March 2, 1899.....	58 00
2 " " " " June 17, 1899.....	4 00
2 " " " not credited.....	4 00
10 fellowship dues for year ending March 2, 1898.....	50 25
1 " " " " June 17, 1898.....	3 00
2 " " " " March 2, 1899.....	10 25
1 " " " " June 17, 1899.....	5 00
Contribution from D. M. O'Connor, 1897.....	50 00
Sale of QUARTERLY.....	4 25
Refunded by Ben C. Jones & Co.....	6 35
Overpaid by Governor O. M. Roberts.....	2 00
Contribution by D. M. O'Connor, 1898.....	100 00
Total.....	\$891 20

EXPENDITURES.

Vouchers	1897		
No. 1	Mch. 10	George P. Garrison— Stationery and printing, 4.75; stamps, 5.00..	\$ 9 75
2	May 21	Lester G. Bugbee— Stationery, .25; supplies, 6.45; stamps, 13.50; refunded to Gov. Roberts, 2.00.....	22 20
3	Apr. 8	Eugene Von Boeckmann— 500 catalogue envelopes.....	6 00
4	Apr. —	Ben C. Jones & Co.— Stationery, 8.75; printing, 21.60.....	30 35
5	Apr. 30	University Book Store— Stamps.....	5 00
6	June 10	Stamps.....	5 00
7	July 8	Eugene Von Boeckmann Pub. Co.— Stationery.....	12 15
8	July 16	Stamps.....	10 00
9	July 19	Clarke & Courts— Maps (engraving) for QUARTERLY, July, 1897.....	25 00
10	July 17	Joe Bauer— Clerical assistance.....	45
11	July 22	Postage on July QUARTERLY.....	2 93
12	July 22	Lester G. Bugbee— Express charges (Clarke & Courts), .75; telegrams to Clarke & Courts, .85; post- age and drayage, .39..	1 99
13	1898 Jan. 4	George P. Garrison— Postage and express charges, 2.50; clerical assistance and notary fee, 1.25.....	3 75

EXPENDITURES—continued.

Vouchers	1897		
14	July 21	Ben C. Jones & Co.— Stationery, 13.50; dummies and engraving, 4.75; July QUARTERLY, 141.78.....	\$160 03
14a	Aug. 18	Express charges from Austin to Ford.....	35
15	Sept. 20	Stamps.....	10 00
16	Oct. 15	Ben C. Jones & Co.— October QUARTERLY, 78.05; extra for tables, 26.85; matter killed and alterations, 8.20; engraving, 1.75; postage and drayage, 1.50.....	116 35
17	Oct. 30	Ben C. Jones & Co.— Stationery, 22.20; express charges, .30.....	22 50
18	Oct. 26	P. T. Lomax— Clerical help.....	4 50
19	Dec. 13	University Book Store— Stationery, .65; stamps, 10.00.....	10 65
20	Dec. 20	Southwestern Telegraph & Telephone Co.....	55
21	Dec. 20	Southwestern Telegraph & Telephone Co.....	1 50
22	Dec. 23	Stamps.....	3 50
23	Jan. 7	1898 Southwestern Telegraph & Telephone Co.....	45
24	Jan. 11	William Corner— Stamps, 4.60; clerical assistance, 8.00; stationery, .40; telephone fee (long dis- tance), 1.00.....	14 00
25	Jan. 17	Austin Photo Engraving Co.— January QUARTERLY engravings.....	10 00
26	Jan. 22	Stamps.....	10 00
27	Jan. 29	E. C. Barker— Clerical assistance.....	3 30
28	Jan. 29	Corner's Book Store— Paper files.....	30
29	Jan. 31	Ben C. Jones & Co.— Programs and notices of San Antonio meeting, 6.75; express charges on above, 5.75; stationery and wrappers, etc., 6.25; wrapping, mailing, etc., 3.00; postage on same, 7.31.....	29 06
30	Jan. 31	Stamps.....	33
31	Feb. 1	Ben C. Jones & Co.— January QUARTERLY, 105.10; cost of maps in full, 24.80.....	129 90
32	Feb. 11	Corner's Book Store— Scrap books.....	2 50
33	Feb. 17	University Book Store— Stamps, 11.00; stationery, .15.....	11 15
34	Feb. —	University Book Store— Plaster paper, 1.00; ink, .05; drayage, .25...	1 30
35	Mch. 12	James B. Clark—Express charges.....	1 15
36	Mch. 21	E. C. Barker— Clerical help.....	3 30
37	Mch. 31	Ben C. Jones & Co.— Circulars and stationery.....	1 20

EXPENDITURES—*continued.*

Vouchers	1898		
38	Apr. 30	Ben C. Jones & Co.— Folders and wrappers.....	\$ 3 50
39	May 4	Ben C. Jones & Co.— April QUARTERLY, 134.60; stamps, 5.10; wrapping, etc., 2.75.....	142 45
40	May 30	Stamps.....	10 00
41	June 1	Rudolph Kleberg, Jr.— Clerical assistance.....	3 00
42	June 15	Ben C. Jones & Co.— Circulars and programs.....	10 50
43	June 14	University Book Store— Pens and drayage.....	35
		<i>Balance on hand</i>	38 96
			<hr/> \$891 20

Respectfully submitted,

L. G. BUGBEE,
Treasurer.

LIBRARIAN'S REPORT FOR 1897-98.

ACCESSIONS DURING THE YEAR.

Author.	Title.	Vols.	Pamps.	Donor.
Becker, G. F.....	Rainfall in California.....			University of California.
Bliss, E. F.....	Dairy of David Zeisberger.....	2	1	Hist. and Phil. Soc. of Ohio.
Bradley, C. B.....	Reference List to Published Writings of Jno. Muir....		1	University of California.
Broadhead, Jas. O.....	Extent of Territory Acquired by La. Purchase.....		1	Missouri Historical Society.
Conway, J. J.....	Catholic Church, St. Louis.....		1	Missouri Historical Society.
Crane, Rev. W. C.....	History of Washington County (Texas).....	1	1	Jas. K. Holland.
.....	Memorias De La Insigne Academia Asnal.....			Dr. M. B. Porter.
Dellenbaugh, F. S.....	True Route of Coronado's March.....		1	The Author.
Elliott, Orrin L.....	The Tariff Controversy, 1789-1833.....		1	Leland Stanford, Jr., Univ.
Gallagher, W. D.....	Progress in the North-West.....		1	Historical Society of Ohio.
Gilman, D. C.....	Report on National Schools of Science.....	1	1	Bureau of Education.
Hempstead, Fay.....	School History of Arkansas.....			The Author.
Holden, Edward S.....	List of Recorded Earthquakes in the Pacific States.....			University of California.
Hoss, E. E.....	Elihu Embree, Abolitionist.....	1	1	Vanderbilt Hist. Society.
H. C. Adams.....	Statistics of Railways in the United States.....	1		Interstate Commerce Com.
Johnston, Wm. Preston..	The Johnstons of Salisbury.....	1	1	The Author.
Littlejohn, E. G.....	Texas History Stories: Houston, Austin, Crockett, I-a Salle.			"
Loughery, E. H.....	History of the Austin Fire Department.....		1	"
Low, Seth.....	Eighth An. Rept. to Trustees of Columbia Univ.....		1	Columbia University.
Lowber, J. W.....	Struggles and Triumph of the Truth.....	1		The Author.
May, Col. Jno.....	Journal and Letters of Col. Jno. May, of Boston.....		1	Ohio Hist. and Phil. Society.
McGuire, J. F.....	Annual Report of Reformatory at Gatesville (Texas)...		1	Department of State (Texas).
Porter, R. P. (Supt.).....	Eleventh Census.....	26		Census Bureau.
Potter, R. M.....	The Texas Revolution.....		1	Mrs. Julia Lee Sinks.
Potter, R. M.....	The Fall of the Alamo.....		1	Mrs. Julia Lee Sinks.

LIBRARIAN'S REPORT—continued.

Author.	Title.	Vols.	Pamps.	Donor.
Powell, J. W.....	Annual Reports of U. S. Geol. Survey: 11th to 16th.....	10		The Department.
Powell, J. W.....	Annual Reports of Bureau of Ethnology: 3d to 16th....	18		Bureau of Ethnology.
Schmitt, Rev. Ed. J. P.....	Geschichte der Deutschen St. Marien Gemeinde.....	1	1	The Author.
Schmitt, Rev. Ed. J. P.....	Bibliographia Benedictina.....		1	"
Shelton, Jno. E.....	Supplementary Reading for Travis County.....		1	"
Smith, Ashbell.....	Reminiscences of the Texas Republic.....		1	Hon. Bearegard Bryan.
Smith, Mary Roberts.....	Almshouse Women.....		1	Leland Stanford, Jr., Univ.
	Scrap Book: Diary of Dr. Bernard concerning the Golliad Massacre.	1		C. W. Raines.
	Scrap Book: The Sinks Papers.....	1		Mrs. Julia Lee Sinks.
	Scrap Book: The Wilson Papers.....	1		Mrs. Wm. L. Wilson.
	Scrap Book: Newspaper Clippings.....	1		Jas. K. Holland.
Textor, Lucy E.....	Official Relations between U. S. and Sioux Indians....		1	Leland Stanford, Jr., Univ.
Trent, W. P.....	Study of Southern History.....		1	Vanderbilt Hist. Society.
Winkler, Mrs. A. V.....	The Confederate Capital and Hood's Texas Brigade....	1		The Author.

Author.	Title.	Vols.	Pamps.	Donor.
	Scrap Book: Newspaper Clippings.....	1		Mrs. Julia Lee Sinks.
	Annual Report of American Historical Association for 1894 and 1895.....	2		The Association.
	Annual Report of Smithsonian Institution, 1895.....	1		The Institution.
	Second Annual Report of Texas Agricultural Bureau.....	1		Dept. of Agriculture, etc.
	Report of Commissioner of Education, 1894-5.....	2		Department of Education.

LIBRARIAN'S REPORT—continued.

Title.	Vols.	Pamps.	Donor.
Report of Commissioner of Education, 1895-6.....	2		Department of Education.
International American Conference: Reports of Committees.....	2		Department of State.
Bulletins and Reports of Bureau of American Republics.....		23	The Bureau.
International American Conference: Reports and Recommendations.....	1		Department of State.
Ohio Archaeological and Historical Association Publications, Vol. V.....	1		The Association.
Catalogue of Library of Long Island Historical Society.....	1		The Society.
Memoirs of Long Island Historical Society, Vol. IV.....	1		"
Annals of Iowa, Vol. III.....	1		"
Minnesota Historical Society Collections, Vol. VIII.....	1		"
Minnesota Historical Society: Ninth Biennial Report.....		1	The Library.
Illinois State Historical Library: Trustees' Report, 1894.....	1		"
Illinois State Historical Library: Fourth Biennial Report.....	1		The Association.
Third Annual Report of Librarian of Montana Historical Association.....	1		"
Publications of Louisiana Historical Association.....	1		"
Twelfth Annual Report of Ohio Archaeological and Historical Association.....	1		"
Charter and By-Laws of Rhode Island Historical Association.....	1		The Society.
Manual of New Hampshire Historical Society.....	1		The University.
University of California Publications.....		12	The Society.
Annual Publication of Historical Society of Lower California.....		2	The University.
Manual of University of Georgia.....	1		"
Announcement of University of Georgia.....	1		"
Catalogue of Trustees, Officers, Alumni, and Non-Graduates of University of Georgia, 1785-1894.....	1		University of Pennsylvania.
Catalogue of University of Pennsylvania, 1896-97.....	1		The Academy.
Sketch of American Academy of Political and Social Science.....	1		The Publisher.
Old South Leaflets: Constitution of the United States.....	1		"
Old South Leaflets: Franklin's Plan of Union.....	1		"
Old South Leaflets: The Federalist, Nos. 1 and 2.....	1		"

LIBRARIAN'S REPORT—continued.

Title.	Vols.	Pamps.	Donor.
Catalogue of Officers and Graduates of Yale, 1701-1895.....		1	Yale University.
Directory of Living Graduates of Yale.....		1	Yale University.
Obituary Record of Yale during the year ending June, 1895.....		1	The University.
Annual List of Books Added to Public Library of Boston.....		1	The Library.
Military Literature in War Department Library.....		1	"
Publications, Articles and Maps Relating to Mexico in War Dept. Library.....		1	"
Proceedings of Texas Veteran's Association, 1883, '92, '95, '96, and '97.....		5	The Association.
Monthly Bulletin of Bureau of American Republics, Vols. II and III.....	2		The Bureau.
Transactions of Texas Academy of Science for 1896 and '97.....		2	The Academy.
Southern Historical Society Papers, Vol. XXIV.....		1	The Society.
Louisbourg in 1745.....		1	University of Toronto.
The Charities Review, November, 1893.....		1	George P. Garrison.
Catalogue of Yale University, 1897-98.....		1	Yale University.
"Cactus" 1895.....	1		George P. Garrison.
Publications of Rhode Island Historical Association, Vols. IV and V.....	2		The Association.
Proceedings of Texas Teachers' State Convention, 1866.....		1	G. Duvernoy.
Documents of Major General Sam Houston to David G. Burnett.....		1	Mrs. W. G. Belding.
Southern Historical Society Papers, Vol. XXV.....	1		The Society.
Thirteenth Annual Report of Ohio State Archaeological and Hist. Society.....		1	The Society.
Catalogue of the Torrence Papers.....		1	Ohio Hist. and Phil. Society.
Historical and Philosophical Society of Ohio: Annual Reports.....		7	"
Historical and Philosophical Society of Ohio: Transactions of.....	1		"
Historical and Philosophical Society of Ohio: Journal of.....		1	"
Historical Papers Read Before the Society of the Cincinnati.....		1	The Society.
Annual Publication of Historical Society of Southern California.....		1	The Society.
Twentieth Annual Catalogue of the A. and M. (Texas) College.....		1	The College.
Catalogue of Graduate School Yale, 1897-98.....		1	The University.
Annual Report of Managers of Buffalo Historical Society for 1896-97.....		2	The Society.

LIBRARIAN'S REPORT—*continued.*

Title.	Vols.	Pamps.	Donor.
Annual Report of American Historical Association, 1896.....	2		The Association.
Stone Idols of New Mexico.....		1	The Hist. Soc. of New Mex.
Annals of Early Settlers' Association of Cuyahoga County.....		1	The Association.
Western Reserve Historical Association: Charter and Reorganization.....		1	"
Bureau of American Republics: Annual Report of Director, 1896.....		1	The Bureau.
Bureau of American Republics: Import Duties of Uruguay.....		1	"
Bureau of American Republics: Import Duties of Chili.....		1	"
Bureau of American Republics: Import Duties of Peru.....		1	"
Bulletin of Department of Labor, 1898.....		1	The Department.
William and Mary College Historical Quarterly, Vol. VI.....		1	The College.
A Comprehensive History of Texas.....	2		William G. Scarff.
Wisconsin Historical Collections, Vol. XIV.....	1		Hist. Society of Wisconsin.
Total Number in Library.....	93	123	

Besides the above books and pamphlets, the Association has a large number of incomplete volumes of the current historical periodicals.

Respectfully submitted,

GEORGE P. GARRISON,
Librarian.



TYLER

THE QUARTERLY

OF THE

TEXAS STATE HISTORICAL ASSOCIATION

CONTENTS.

THE CAPITALS OF TEXAS.....	O. M. Roberts.
RUTERSVILLE COLLEGE	Julia Lee Sinks.
SKETCH OF THE DEVELOPMENT OF THE JUDICIAL SYSTEM OF TEXAS. II.....	John C. Townes.
ENDURING LAWS OF THE REPUBLIC OF TEXAS. II.....	C. W. Raines.
NOTES ON THE HISTORY OF LA BAHÍA DEL ESPÍRITU SANTO	Bethel Coopwood.
EARLY EXPERIENCES IN TEXAS. II.....	Rosa Kleberg.
NOTES AND FRAGMENTS.	
QUESTIONS AND ANSWERS.	
AFFAIRS OF THE ASSOCIATION.	

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OF THE

TEXAS STATE HISTORICAL ASSOCIATION.

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THE CAPITALS OF TEXAS.

O. M. ROBERTS.

[This is an unfinished paper, which Governor Roberts was preparing for THE QUARTERLY at the time of his death.—G. P. G.]

While Texas was under Spain and Mexico, it can hardly be said to have had a seat of government within its territory. The Consultation of 1835, by which the first provisional government of Texas was organized, and which represented the different municipalities, met at San Felipe de Austin on the Brazos river. That continued to be the meeting place of the executive officers, i. e., the governor, lieutenant-governor, and the members of the executive council, of whom there was one for each municipality, until their powers ceased upon the meeting of the Convention, March 1, 1836. The most remarkable circumstance pertaining to this temporary government was the violent controversy between the governor and the executive council.

The Convention of 1836, which made the declaration of independence and organized the second provisional government with a president and cabinet, was held at Washington on the Brazos. There was no capital then established, nor did the executive officers remain

at any one place during their term of service. They were for a time at Lynchburg and afterwards at Velasco.

In the fall of 1836 the Texas congress met at Columbia on the Brazos, and there held its first session with Gen. Sam Houston as president. During that session a law was passed making the city of Houston the seat of government of Texas from that time to the end of the session of congress that should be held in the year 1840. Gen. Stephen F. Austin, who was secretary of state under President Houston, died at Columbia, as it was said, from exposure in the discharge of his duty during the first session of congress.

At Houston a large frame house was built for a capitol, and when the seat of government was moved from that city the house became known as the Capitol Hotel. Now the ground is occupied by a large brick structure called by the same name. According to the constitution of 1836, which provided that the first president should serve two years, that the term should thereafter be three years, and that no one holding the office should be eligible to succeed himself, President Houston could not be his own immediate successor. Vice-President Mirabeau B. Lamar became the next president, and was inaugurated at the capitol in Houston in 1838.

In 1839 the Texas congress passed a law for the selection of a seat of government by five commissioners, two from east and three from west of the Trinity river. They were to purchase or have condemned for the State a tract of land upon which a capital city should be built. They were required under oath to keep their proceedings a profound secret and make their selection between the Trinity and Colorado rivers, north of the Old San Antonio Road or "King's Highway", which ran near Crockett and Bastrop. The possibility of selecting Houston, which had been named for President Houston, and was understood to be favored by him, was thus excluded. That was perhaps one amongst other evidences that President Houston's influence did not prevail during Lamar's administration. The fact that the place selected was on the northeast side of Colorado river, being in what was then Bastrop county on the extreme frontier of the settlements of the State, suggests the inquiry as to what could have been the reason for it. It has been said that one reason was because the place was as nearly as was then practicable in the center of the State. That could hardly have been the controlling reason; for since then there have been two elections throughout the

State to locate the seat of government, one in 1850, and one in 1872. In 1839 when the selection was made a majority of the inhabitants of Texas lived east and north of the Trinity river, from one hundred and fifty to four hundred miles from the place selected. If the circumstances attending the selection are examined into, it will be found that there were other reasons than the fact of the central position of the locality that determined the choice. For many years afterwards there was occasionally mentioned a report that Lamar while vice-president came with a party to this place on a hunt, that he early one morning shot and killed a buffalo in the narrow valley where Congress Avenue in the city of Austin is now situated, and that in taking a survey of the mountains and country around he said with poetic ardor to his comrades, "Here should be located the capital of Texas." This may explain why some prominent men located certificates on these ridges and hollows near the river on the northeast side of it in preference to locating them upon the rich black plains in the neighborhood. It may also explain why the five commissioners in the public report of their proceedings spoke of no other place having been examined by them. In about twenty days they had all the steps taken for the condemnation of 5,004 acres of land, instead of purchasing from those who had located it, as the law permitted them to do. The commissioners were made aware of the parties and of the lands located by them as shown by their report¹. It is not reasonable to suppose that the selection could then have been made by a general vote of the people; this may be presumed from the subsequent efforts to remove the capital by election. Fortunately, however, the more extensively the State became settled up, the more appropriate became the location of the capital where Austin is now situated; and the building of the magnificent granite State house that has recently been erected may be taken as conclusive evidence of the general wish of the people that the seat of government shall remain permanently in this city.

There was a large frame structure built for the capitol on the

¹ Those who had located the lands were paid by the government for their claims. Afterwards it was found that Gen. T. J. Chambers had previously appropriated eight leagues of land, including the 5,004 acres condemned for the capital city. His claims also have been sustained by the supreme court of the State in the case of Chambers vs. Fisk et al. (22 Texas, 504); but neither he nor his heirs have ever been paid for this city tract of land.

ridge immediately west of Congress Avenue, where the City Hall now stands. The government offices having been removed, and Gen. Sam Houston having been again elected president of the Republic, he was inaugurated at the capitol in Austin in 1841.

In 1842 a large body of Mexican troops captured San Antonio and took many persons prisoners, including the officers of the district court then in session. The news of it soon reached Austin and produced great excitement. Preparations were shortly begun to remove the public archives, under the apprehension that Austin might also be attacked. President Houston and his cabinet left the city and went to Washington on the Brazos. He sought to have the archives removed to that place, which was resisted and prevented by the citizens of Austin and of the surrounding country. This affair has been called the Archive War. It involved no bloodshed, though much hard talk, but the archives were not removed from Austin.

The president convened congress at Washington on the Brazos in the fall of 1842. The sessions were held in cedar frame buildings that apparently had been erected for store houses. The capital remained there until July 4, 1845, when the Annexation Convention met in Austin, and the terms of the United States were agreed to and a new constitution adopted. From that time to the present, Austin has continued to be the seat of government of the State of Texas. It was in the building above mentioned west of Congress Avenue that President Anson Jones, on the 16th of February, 1846, surrendered the government of the Republic of Texas, to the executive officers and legislature of the State government, and the first governor of the State, J. Pinckney Henderson, was inaugurated.

A few years thereafter a more substantial building was erected for the capitol, near the center of the plat of ground of ten acres that had been set apart for a capitol building in laying off the city of Austin. This building was about one hundred feet long, fifty or sixty feet wide, and three stories in height, with broad stone steps at the south front reaching from the ground to the floor of the second story. The halls for the senate, the house of representatives, and the supreme court were situated on the third floor. The walls were built of hard limestone on the inside, and a soft yellow limestone on the outside that had been sawed in shape and smoothly planed. The same soft stone was used in building the Temporary Capitol in 1882 and may be seen on the outside of its walls. It was on the top of

the high steps in front of the Capitol that Governor Houston delivered his inaugural address to the assembled audience seated on the steps below and standing in the yard around them, on the 21st day of December, 1859. In the Hall of Representatives in this house, on the 28th of January, 1861, met the Secession Convention, composed of 180 members, prominent citizens of Texas, who, by their acts, in conjunction with those of the legislature, withdrew the State from the Federal Union and made it a part of the Southern Confederacy. On the 9th of November, 1881, this capitol building was burned by accident during my administration as governor. The greatest loss was that of the State library and the collection of geological specimens in the building, and the use of that house while the new capitol was being erected. The burning was accidental, and was caused by a clerk having a stove put up in one of the rooms with the top of the stove-pipe inserted in a hole in a partition wall. He supposed the hole to be the entrance to a flue that extended up through the roof of the house; when in fact it had been made in the partition wall to pass a pipe through the adjoining room to a flue in the next wall. This adjoining room had in it a large pile of books and papers that were set on fire by the sparks from the stove. The partition being of wood, the fire ran up it to the ceiling above before it was discovered; and then it was found that the pressure in the hose was not sufficient to throw the water to the top of the burning wall, and consequently the building could not be saved. The room in which the fire started was a book and paper store-room, that was entered only to put in and take out books and papers, and therefore but few persons were aware of the fact that the hole in the partition wall did not enter a flue. This explanation is made to show that the burning was accidental, and that it could not be prevented when it was discovered.

Most of the record books and papers of the executive offices were removed from the house before the fire reached them. The county authorities kindly furnished the governor with offices in the court house, and the secretary of State with a room in the county jail, and other rooms were rented for the different executive officers and for the senate and house of representatives. The legislature was convened in special session April 6, 1882. A bill providing for the erection of a temporary capitol was soon passed, and was approved May 4, 1882. It authorized the capitol board, consisting of the

governor, comptroller, treasurer, attorney-general, and commissioner of the general land office, to erect or rent a building for the purpose, and appropriated the materials of the buildings left on the capitol grounds and fifty thousand dollars to enable them to do it. The stone walls of the burned buildings, it may be remarked, had suffered little damage.

Finding that nothing suitable for their purpose could be rented, the commissioners determined to erect one large building to accommodate the government officials, and selected a place for it on Congress Avenue opposite the county court house. The site chosen is within the ten acre tract of land originally laid off for a capitol in surveying the city of Austin, as is also the ground upon which the court house stands. It was completed, and the executive offices were moved to it in time for the meeting of the legislature on the 9th of January, 1883, and soon afterwards Gov. John Ireland delivered his inaugural address in the representative hall of that building. According to the law mentioned above, it was to be used by the State officials until the completion of the new capitol, which was dedicated a few days after it was finished, on the 16th of May, 1888, during the administration of Gov. L. S. Ross.

There was a circumstance connected with the erection of the temporary capitol that deserves to be noticed. The walls had been completed, and the building had been covered with a blank roof for the shingles, when a very hard storm of wind and rain struck it, tore down the northwest corner nearly to the ground, and threw down parts of the north and west walls, which caused the roof to lean over to the northwest quite low. That took place at night, and the next morning the unfinished capitol was a bad looking sight. The capitol board selected three experienced builders to advise them what should be done to restore the building. The three met, examined the structure, and made their report in writing. They advised, in substance, that the whole of the north and west walls still left standing should be torn down and the foundation enlarged, and upon it thicker walls should be built. Then they immediately left for their homes. The board submitted the proposition to the contractor Mr. Smith, who refused to comply with it, because it would perhaps cause the other walls to fall, and because, even if it did not, he could not afford to do it under his contract. Thereupon the governor denounced the proposition as wholly unreasonable and impracticable,

and others of the board joined him in the opinion. Colonel Myers, the designer of the new capitol, who was in the city, was employed to examine the building and report some plan by which the walls should be rebuilt without tearing down any part of them, and it was done according to his directions. This accounts for the iron girders in the walls of the house. They were put in for greater safety but are really unnecessary; for the house with its partitions and substantial walls is really a good building, in which was used the best material of the old capitol and other structures.

* * * * *

RUTERSVILLE COLLEGE.

JULIA LEE SINKS.

I find from a quaint document furnished me by Mrs. Chauncey Richardson¹ and written by Mr. John Rabb, one of the original projectors of Rutersville College, that in the summer of 1838 ten members of the Methodist church, living in the upper part of the district known as Austin's Colony, agreed to purchase a league of land for the purpose of locating thereon a settlement including a college, or at least a permanent academy. The same document says that "it was first suggested by Rev. Martin Ruter, one of the first missionaries that were sent to Texas, but his death soon after prevented his undertaking with his brethren the enterprise. The village was named for him by vote of the proprietors." I give the names of six: "Robert Alexander, D. D., A. P. Manley, M. D., Mr. Robert Chappell, Mr. Franklin Lewis, Rev. William M——² of the Cumberland Presbyterian church, John Rabb."

On the 23rd of September, 1838, a few of the above mentioned proprietors met, with Rev. John W. Kenney as their surveyor, and commenced to survey the village.

Rev. D. N. V. Sullivan taught the first school.

A clause in the deeds prohibited the sale of ardent spirits, and gambling.

In 1840, through the untiring efforts of Rev. Chauncey Richardson of the Methodist Episcopal church, a charter was obtained from the Texas government, and a donation of four leagues of land for the benefit of the college. The congress of Texas appointed Mr. Richardson president. He also acted as agent for the College and obtained by donation a large quantity of land. The institution was chartered with university privileges.

Through the kindness of Mr. E. W. Crawford of Rutersville, I

¹ Wife of Rev. Chauncey Richardson mentioned further on. Now Mrs. — Van Bibber, and residing in New Orleans.

² Name rubbed out.

have been furnished with the following statistics of the College for its establishment and first term:

TRUSTEES.

Rev. Chauncey Richardson, President.

John Rabb, Treasurer.

Hon. Andrew Rabb.	Jonas Randall.
John H. King.	Joseph Nail.
James S. Lester,	Dr. A. P. Manly.
Wager S. Smith.	Dr. W. P. Smith.
Thomas D. Fisher.	

HONORARY TRUSTEES.

Hon. James Webb.	William Menefee.
Francis Moore.	G. W. Barnett.
R. Alexander.	R. B. Jarmon.

FACULTY.

Chauncey Richardson, A. M., President.

Charles W. Thomas, A. B. Tutor.

Martha G. Richardson, Preceptress.

MEMBERS AND PATRONS OF THE COLLEGE.

*Preparatory Department.*³

Alfred Alway.	Duncan Murchison.
Sarah Alway, Rutersville.	Hon. John Murchison, Fayette County.
C. L. Blair, Rutersville.	Joseph Mendes, ⁴ Rutersville.
Francis Ayres.	Edwin L. Moore, Rutersville.
Theodore Ayres.	James J. Norton.
David Ayres, Center Hill.	Dr. A. P. Manley, Rutersville.
Lionel Brown.	William A. W. Nail.

³ Names marked with an asterisk are those of parents.

[⁴ Or José María Mendez. This was a Mexican fifer boy captured at San Jacinto by Monroe Hill, whose name appears in the list above. Mendez was offered permission to return to Mexico if he chose, but he preferred to remain in Texas rather than be forced into the Mexican army again, which he feared would be the result if he went home. He lived with the family of Mr. Asa Hill, Monroe Hill's father. Afterwards he became a silver-smith in Houston, where he died of yellow fever sometime late in the 40's. These facts are furnished by Mr. Monroe Hill.—G. P. G.]

Samuel Brown, Washington	Lewis M. Nail.
J. P. Bowles. [County.	P. M. Nail.
Henry S. Bowles.	Quincy S. Nail.
E. Bowles.	Clark B. Nail.
James H. Dennis.	Joseph Nail, Rutersville.
William Evans.	Z. P. M. Rabb.
Hon. Musgrove Evans.	George W. Rabb.
Rufus Fisher.	John W. Rabb.
Thomas D. Fisher, Rutersville.	John Rabb, Rutersville.
Monroe Hill.	Charles Randall.
Asa C. Hill.	Jonas Randall, Rutersville.
John C. Hill.	Enoch B. Simons
Asa Hill, Rutersville.	Daniel Barrett.
Constantine Killough.	Jordan Sweeny.
Mr. — Killough, Rutersville.	Mr. — Sweeny, Matagorda County.
James Matson.	James A. G. Smith.
Richard Matson.	Dr. William P. Smith, Rutersville.
Captain Fuller, Washington.	George C. Tennehill. ⁵
James L. Morrow.	J. N. McD. Thompson. ⁶
John C. C. Moore.	Alexander Thompson, Milam County. ⁷

Female Department.

Martha Ann Alway.	Sarah A. Hill.
Celia Alway.	Mary A. R. Hill.
Sarah Alway, Rutersville.	Martha A. E. Hill.
Martha Davis.	Asa Hill, Rutersville.
Rev. — Davis, Rutersville.	Amanda Jarmon.
Mary A. Edwards.	Col. R. B. Jarmon, Fayette County.
Dr. M. Barrier, Rutersville.	Jane H. Kerr.
Isabella H. Fisher.	William Kerr, Washington County.
Thomas D. Fisher, Rutersville.	Mary J. A. Kerr.
Col. Lee Grey, Rutersville.	George Kerr, Rutersville.
Indiana Grey.	Eliza Moore.
Angelina H. Gilbert.	Lovick L. Moore, Washington County.
Abram Gilbert.	A. M. F. Moore.
Mary H. Hall.	Edwin L. Moore, Rutersville.
E. K. Hall, Columbia.	Melissa C. Rabb.
Mary Jane Hayden, Rutersville.	John Rabb, Rutersville.
N. Caroline T. King.	Martha Reagan.
John A. King, Rutersville.	Mr. — Reagan, Rutersville.

[⁵ Mr. Hill thinks this name should be Tennell.—G. P. G.]

[⁶ Cousin to Mrs. Monroe Hill. Mrs. Hill was a member of the Female Department., her name before marriage being Jane H. Kerr. Mr. Thompson was one of those Mier prisoners who drew black beans and were shot.—G. P. G.]

[⁷ Surveyor of Austin's colony.—G. P. G.]

Elvira Nail.	Mary A. Simons.
Joseph Nail, Rutersville.	Daniel Barnett, Austin County.
Ann Sophia Richardson.	Susan C. Thompson.
Rev. C. Richardson, Rutersville.	Alexander Thompson, Milam County.
S. A. Hill.	Clarissa M. Tennehill.
L. Elizabeth Hill.	S. Ann Tennehill.
George Tennehill, ^s Rutersville.	

Below I give the terms of admission to the classical course. They appear to me rather astonishing, I must confess; but it was probably not expected that the sons of pioneer Indian fighters should rise to the dignity of this course for many years to come. From the force of circumstances most of them would have to enter the Preparatory Department, and the requirements for entrance into the classical course were set before them only as a mark of a higher calling. Those admitted to this course were expected to know "the English Language, Davies' Arithmetic, Davies' Algebra as far as Quadratic Equations, Ancient and Modern Geography, Latin and Greek Grammar, Caesar's Commentaries, Cicero's Select Orations, the Georgics and Aeneid of Virgil, Jacob's Greek Reader, or St. John's Gospel in Greek."

For the benefit of those who were unable to satisfy these requirements there existed the following provision: "Beginners in science and in literature will be admitted to the Preparatory Department, and also to the Female Department." This was the opening for most of those who were to profit by the school and to obtain from it all the instruction they would perhaps ever get.

In the second term the names of Rev. C. W. Thomas, A. B., Professor of Ancient Languages and Mathematics, and Mr. Thomas Bell, Tutor, appear in the list of the faculty, and there is an advance from the sixty-three students enrolled during the first term to one hundred.

Among the papers transcribed from the records of the College and furnished me is the list of the donors to its endowment fund. Gifts of land are as follows:

The Texas Congress.....	17,776 acres.
Rutersville, for site of College	52 "
Rutersville, for Female Department	24 "

[^s See note 5, which applies also to the two names preceding this.—G. P. G.]

Then comes a list of donations obtained by the president subsequent to May 20, 1840, the aggregate being 24,516 acres.

In addition there is a list of *subscriptions in par money*, which I transcribe exactly as it was written.

Hon. Nathan Thomas, Member of Congress.....	\$50
S. S. B. Fields	50
Rev. D. R. Reid, Nov. 1840.....	25
A. W. Woolsey, due May 1841.....	200
P. H. Martin, Feb. 1841.....	50
Benjamin Phillips, Nov. 1840.....	25
H. Mathews, Jan. 1842.....	500
H. A. Adams, Jan. 1842.....	100
H. O. Campbell, June 1841.....	25
J. Campbell, " "	25
C. B. Shepherd, May "	20
James Cochran, " "	100
J. W. Harris, June "	25
L. W. Groce, " "	100
S. V. Samothe.....	50
Mr. Bracy, Sept. 1840.....	50
W. C. & A. H. Jones, June 1841.....	25
Oliver Jones, " "	25
J. W. Foster, " "	25
William Keesee, " "	25
John Grey, " "	25
N. W. Eastland, " "	40
W. Y. McFarland, Sept. 1841.....	25
S. Wright, Jan. 1842	25
J. L., Sept. 1841.....	20
H. Woodward	10
Wm. Menefee	100
M. Yanbudess, July 1841..... ⁹	
W. P. Thorp, Oct. 1841	100
Wm. Price, " "	50
J. G. Wilkinson, Oct. 1841	100
J. C. Bridgeman, Apr.	25
J. B. Alexander, Apr. 1841	25
F. W. Habert, " "	50
James Stephens	25
J. W. Kenney, 1840..... ¹⁰	

Then follows a list of subscriptions in par money, payable in five annual installments, the first falling due January 1, 1842:

⁹ Figures omitted.

¹⁰ Figures omitted.

Wm. R. Alexander.....	\$500
David Ayres.....	500
C. de Bland	500
James R. Isbell.....	500
John Rabb	500
R. S. McCormack.	500

There is given also a list of donors to the College library:

Robert Martin, Nashville, Tenn.....	3 vols.
J. Shackleford, Courtland, Ala.....	5 “
A. Kingly, Nashville, Tenn.....	35 “
M. Eacham, “ “	10 “
Mr. Watkins, Courtland, Ala.....	¹¹
Mr. Tice, Tuscumbia, Ala.....	5 “
H. A. Prout, “ “	9 “
D. G. Burnet, Austin City, Texas.....	14 “
Governor Polk, Tenn.....	10 “
Mrs. Caldwell, Nashville, Tenn	2 “

One donor, “C. Richardson,” gives to the College cabinet choice minerals and shells valued at \$600.

However much it may have been denied by those concerned in bringing about at a later time the union of the Military Institute of Galveston with the College at Rutersville and the Monumental Committee of La Grange, the patronage and oversight of the Methodist Episcopal church shows itself throughout the early history of the College, and whatever success attended the beginnings of the institution was undoubtedly attributable to that energetic body. Of course, however, people of all denominations and of no denomination at all assisted; for it was one of the early efforts at honorable achievement in Fayette, in which all citizens of the county were interested.

The College was largely endowed with land, the gift of the State and of individuals, and there seemed never a fairer start for an educational venture. But, for want of patient waiting until time developed its resources, these very resources themselves melted away and left it too weak to become what it should have been—the alma mater of the youth of Fayette county—keeping at home the thousands that were eventually spent to build up distant schools. Even a nation in its beginnings can never take in at a glance the

¹¹ Number not given.

value of its own resources. This knowledge must be born of experience and nursed by patience and fortitude. Had the trustees at Rutersville College encouraged these virtues in themselves, better results would have been obtained; but they did not, and much was consumed in a day which would have furnished ample provision for a great and progressive future. Though such education as met the common needs of the people was given to many, very many, who would otherwise have been without it, and though its refining influence was scattered among many homes, brightening them by its presence, yet to pay the expense land was given in part;¹² and though it was rated fairly as land was then going, the practice slowly but surely destroyed the hopes of the institution. What with the great scarcity of money, the Indian fighting, and the Mexican fighting, there came the idea that whatever was done must be done at once. This was the engrossing thought, and patience and the prospects of the College died together.

No doubt much of the land donated was given by the members of the Methodist Episcopal church, the activity of whose membership made it appear at first as if the institution were established in its interest.

For many years the College was under the control and supervision of Mr. William Halsey, Principal and Professor of Ancient and Modern Languages, assisted by Mr. Ulysses Chapman, A. M., Professor of Mathematics and Natural Science, Mrs. Mary Halsey being at the head of the Female Department. The commendation of Mr. Chapman in the quaint old document referred to at the outset is: "He is a regular classical scholar. He knows of no such words as 'I can't do it.' He can lay down his books and do anything that any other man in our village can do."

In 1856 Rutersville College was consolidated with the Military Institute, previously located at Galveston, and the "Monumental Committee" of La Grange, and it now becomes necessary to describe briefly the objects and organization of the last. The bill for its incorporation was approved January 19, 1850, and it begins as follows: "Be it enacted by the Legislature of Texas, that Albert L. Vail, George W. Sinks, John W. Dancy, Wm. J. Russell, Isaac B. McFarland, Thomas W. Cox, John T. Cox, Hamilton Ledbetter, D. G. Gregory, A. P. Manly, Wm. G. Webb, Wm. Menefee, Wm. P. Smith, Charles S. Longcope, R. B. Jarmon, and Joseph Shaw, be,

and they are hereby constituted, a body politic and corporate, under the name and style of the 'Monumental Committee.'” This committee was incorporated for the purpose of raising funds to build a monument to the decimated Mier prisoners and the Dawson soldiers.¹³ To accomplish this, a paper was to be established, the proceeds of which, after paying expenses, were to go to the purpose.¹⁴ Donations also were to be solicited. Among the contributors were R. B. Hudnal, (\$5.00); Thomas Owen, Arley, Warwickshire, England, (\$5.00); and John A. Green (\$25.00).

It was an early thought to have a military school connected with this enterprise, but the monument was to be first erected. That, with the people, was something tangible, and those that contributed felt a sort of proprietorship in it. The military college was a dream that found its realization only in the failure of their own cherished idea. The feeling that afterwards swept the monumental fund from its proper and legitimate channel was based, no doubt, upon the original idea of a military school, but the end shows it was a mistake; for the monument was not raised, and the school proved ephemeral.

In 1856 an agreement was signed to lease to Col. C. G. Forshey the buildings and property of Rutersville College for the purpose of removing thither the Texas Military Institute from Galveston. It was further agreed that the board of trustees of the College should, if possible, obtain legislation ratifying the contract, consolidating the Institute with the College and the Monumental Committee, and repealing the provisions of the charter which gave the Methodist conference the privilege of supplying vacancies in the board. A new charter, obtained in August, accomplished the desired consolidation. But there resulted evident dissatisfaction in the minds of many, particularly the relatives of the dead whom the monument was to commemorate. They steadfastly refused to have the remains moved from the place where they were buried to Rutersville,¹⁵ as contemplated, so that the monument, when built, should help to adorn that institution.

In defense of the change in the College, I find an article in “The

¹³ See Scarff's *Comprehensive History of Texas*, Vol. I, pp. 705-8.

¹⁴ See *THE QUARTERLY*, July, 1897, pp. 34-7.

¹⁵ See note 13.

True Issue," (a paper that followed the "The Monument," established to aid the monumental fund) of March 27, 1858, written by Captain C. S. Longcope, one of the trustees, "defending the permanency and proper conduct and successful management of the institution of Ruttersville, known by the name of the Texas Monumental and Military Institute." I find also a communication to The True Issue from William P. Smith, one of the original Monumental Committee, saying that he had added to the monumental fund two thousand dollars,¹⁶ and being convinced that there should be a combination of utility with beauty, and having advised with several gentlemen, he had drawn up and presented to the legislature through Mr. J. L. Hill an amended charter differing from the old one in the following particulars:

1. For the name "Monumental Committee" it substituted "Monumental University."

2. Instead of a committee of sixteen it required seventy, the major part composed of distinguished gentlemen residing in different sections of the State, out of whom a minority of seven, residing mostly in and about the town of La Grange, were to constitute a business quorum.

3. The funds under the management of this committee or board were to be appropriated for the purpose of erecting suitable buildings for the Texas Monumental University. The board was to have the privilege of educating in languages, science, and military tactics, indigent youths of the State, and especially the sons of the fallen heroes of the Texas Revolution.

This seems laudable, but the fact is that much had been subscribed by the relatives of the dead to whom the monument was to be erected, and the transfer without their consent appears like a breach of trust. It is singular, too, that one individual could exercise the right to draw up an amendment to the charter of a corporate body in which so many were joined and get it before the legislature without the concurrence of the others. This action was doubtless taken with the counsel and by the direction of the trustees, though it is not so stated; for those who thought the monument ought to be considered first had withdrawn, and had been replaced by those who were favorable to the change.

¹⁶ One thousand was given by the Texas legislature.

Aside from the disappointment caused by the diversion of the monument fund from its original purpose, the people felt very kindly towards Colonel Forshey and his faculty, with the exception of some members of the Methodist church who, remembering their former labors in behalf of the College, could not give up the idea that it of right ought to belong to their denomination. But investigations were made, and it was fully proved by the testimony of Rev. John Haynie, himself a Methodist, and of others, that, however much the progress of the institution, and almost its existence, in its early days, was due to the energy of Methodist ministers and the liberality and patronage of Methodist people, the church as an organization had no legal right to the property. The success of the reorganized school seemed quite satisfactory, and it really had a look of permanency. The great popularity of Colonel Forshey's two assistants, Colonel Timmons and Major Thornton, both men of genius, helped it no little. Colonel Forshey in his annual report in 1859 says: "The success we have had—and it has been unspeakably gratifying—has been in spite of hostility. We have without any organized or associated patronage advanced the Institute in a little more than three years from a private school with seven pupils to the dignity of a college with more collegiate students now than any institution in the State, and certainly more than any of the same age, and we have graduated a class of our own material on the spot where sixteen years' effort of the previous organization had never been able to arrange collegiate classes."

Sixteen years of primary teaching had perhaps helped to prepare the way. Let us not despise the day of small things.

The short life of the reorganized institution was attributable in great measure to the war of Secession. Its students approaching graduation heard the shrill clarion with uplifted heads and prepared to depart. Though the last commencement address—or near the last—by the Hon. Ashbel Smith was eloquent for the Union, it fell on ears and hearts instinct with the desire for war, and its lesson bore no fruit.

SKETCH OF THE DEVELOPMENT OF THE JUDICIAL
SYSTEM OF TEXAS. II.

JOHN C. TOWNES.

Since the publication of part I. of this sketch Mr. L. G. Bugbee, of the School of History of the University of Texas, has kindly called my attention to Decree No. 136, of date September 1, 1830, of the laws and decrees of Coahuila and Texas,¹ which relates to trial by jury. The substance of this decree is as follows: The ayuntamiento in each district capital was to select yearly from among the citizens of the district from twenty-one to eighty-four jurors, who should possess the same qualifications as members of the ayuntamiento. The persons so selected were to be the jurors for one year. The preliminary examination of criminal offenses was to be conducted as heretofore by the primary courts of justice, but whenever the evidence introduced satisfied the primary judge that the crime was proved, he was to desist from further investigation of the case, and send the prisoner and the proceedings had before him, to some alcalde of the capital of the district. The proceedings were to be continued before this alcalde who should at once require the prisoner to choose his counsel, and immediately thereafter the trial should begin. The prisoner then selected from the list of jurors seven to sit in his case. The prosecution could make objection to two jurors, provided this was done within twenty-four hours after they were chosen. The places thus made vacant were to be filled by selection by the prisoner from the other jurors. The seven jurors were then to be notified by the alcalde and were to meet within four days and were to be sworn to try the case. From these jurors a secretary and a fiscal were to be selected. The fiscal thus selected was to make an examination of the proceedings up to that time and form a "recapitulation" thereof, and express his opinion as to the guilt or innocence of the prisoner. For this he was allowed eight days, and immediately thereafter the jury was to meet again publicly, and the

¹ Laws and Decrees of Coahuila and Texas, p. 151.

proceedings and recapitulation were to be read in the presence of the prisoner and his counsel, and the record was to be delivered to them, and upon the 6th day after such delivery the jury was to re-assemble and proceed with the investigation, having the right to examine the prisoner and his counsel. The case was then to be discussed by the jury until all of them signified that they were prepared to vote. Each juror was then to vote by ballot, signifying his judgment as to the guilt or innocence of the prisoner, and if he believed him guilty specifying the punishment to be inflicted. If a majority concurred in the innocence of the prisoner he was acquitted; if a majority concurred in his guilt and as to the punishment, he was adjudged guilty, and the punishment was fixed as specified in the ballots. If a majority found him guilty, but differed as to the punishment, the question of punishment was reconsidered until a majority should agree on it. If the prisoner were acquitted this ended the proceedings; if he were found guilty judgment could not be pronounced in that tribunal, but all the proceedings were passed to the first hall of the tribunal of justice, which was required to pass upon the question of punishment, and if the punishment as fixed by the jury was moderated or approved, judgment to that effect was rendered by that court, and from this no appeal could be taken. If, however, this tribunal should increase the punishment as fixed by the jury, an appeal lay to the second hall of the tribunal of justice. If this second appellate court concurred in the increase of the punishment this should be final. In case the punishment assessed were capital an appeal lay to the tribunal of justice, composed of all three halls of the supreme court.

This law had no application to civil cases, and is so essentially different from all common law ideas of juries in criminal cases that it emphasizes very greatly the predominant influence of civil law in our jurisprudence at that time.

We come now to the consideration of the subject matter of the second paper, that is, the modifications made by the Constitution and statutes of the state in the judicial system established by the Republic.

Were the question an open one it would be most interesting to investigate and ascertain from original data just when it was designed by the two governments interested, that the Republic of

Texas should cease to exist and the state of Texas should come into being; but it is not open. The cases cited in the former article show that by the decision of the supreme court of the United States, subsequently acquiesced in by all the departments of the state government, "the admission of Texas into the Union took date from the 29 of December, 1845, the time of its admission by congress and the laws of the Union extended over it from that time."

It does not, however, follow that the state government contemplated by the constitution of 1845 went into practical operation on that day. On the contrary, the constitution expressly provided that the existing government and its administration by the existing officers should continue until actual organization of the state government could be effected. The first state legislature assembled Feb. 16th, 1846, and on that day President Jones retired and Governor Henderson was inaugurated, and the judicial article of the constitution of 1845 became the basis of the Texas judicial system. The governor and the legislature at once proceeded to select the judges for the various courts, who were to be chosen in that manner.

The system thus established consisted of a supreme court, district courts, county courts, and justices' courts. The jurisdiction of these courts in some instances differed materially from that now exercised by tribunals of same designations.

The jurisdiction of the supreme court remained practically as under the Republic. It had appellate jurisdiction only, and was the court of last resort in all cases both civil and criminal.

The most radical change as to it was with reference to the judges composing the court. It was no longer to consist of a chief justice and several district judges sitting in banc, but of a chief justice and two associate justices appointed by the governor with approval of the senate, who had no official duties except as members of that tribunal. This change was necessary because of the increase in population and business. The interests of the state required a very considerable increase in the number of district judges and also longer service by them in discharge of their duties in their several districts. The number of cases was also increasing in the supreme court so as to necessitate more frequent and longer sessions by it. It was therefore impracticable for the same persons to fill positions on both courts.

The powers and jurisdiction of the district courts is fixed in section 10 of the judiciary article as follows:

The district court shall have original jurisdiction of all criminal cases, of all suits in behalf of the State to recover penalties, forfeitures, and escheats, and of all cases of divorce, and of all suits, complaints, and pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at, or amount to one hundred dollars, exclusive of interest; and the said courts, or judges thereof, shall have power to issue all writs necessary to enforce their own jurisdiction and to give them a general superintendence and control over inferior jurisdictions. And in the trial of all criminal cases, the jury trying the same shall find and assess the amount of punishment to be inflicted or fine imposed; except in capital cases, and where the punishment or fine imposed shall be specifically imposed by law.

In this section we find the first constitutional reference to any distinction between law and equity. Up to this time this peculiarity of the common law had been continuously ignored, except in section 12, act of February 5, 1840, heretofore quoted, and in that the recognition was partial and designed to regulate the exercise of both jurisdictions by the same court rather than to adopt and enforce the differences between the two.

This first constitutional reference to this distinction is not to adopt or perpetuate it, but to deny its existence and prevent any attempt at its recognition either by the legislature or courts of the state. A similar provision has been made in every constitution of the state since adopted.

As we have seen the common law of England was adopted as the general rule of decision in Texas by act of January 20, 1840, and continuously from that date the Texans have been an English speaking people having the common law as the basis of their jurisprudence, but yet denying the arbitrary distinction made by that system between law and equity and since 1845 have by constitutional provision forbidden the legislature to incorporate such distinction into its laws.. From January 20, 1840, to November, 1846, the date of the adoption by the State of New York of a new constitution abolishing this distinction it was the only government of which this was true.

The first legislature of the state of Texas made speedy and full provision for the organization of the judicial department of the government as contemplated by the constitution. On May 11, 1846,

it adopted an act to organize the district courts and define their powers and jurisdictions.² Sections 2, 3, 4, and 7 of this act are as follows:

Sec. 2. Be it further enacted, That the judges of the district courts shall by virtue of their offices, be conservators of the peace, throughout the state, and the district courts shall have original jurisdiction of all criminal cases, of all suits in behalf of the state, to recover penalties, forfeitures and escheats, and of all suits against the State, which are or may be allowed by law, and shall have power to hear and determine all prosecutions in the name of the State, by indictment, information or presentment for treason, murder or other felonies, crimes and misdemeanors, committed within their respective jurisdictions, except such as may be exclusively cognizable before justices of the peace or other courts of the State, and shall, in criminal cases, have and exercise all the powers incident and belonging to courts of oyer and terminer, and general jail delivery; also of all suits for the recovery of land, of all cases of divorce and alimony, and of all suits, complaints and pleas whatever, without regard to any distinction whatever between law and equity, when the matter in controversy shall be valued at or amount to one hundred dollars or more, exclusive of interest, and generally to do and perform all other acts pertaining to courts of general jurisdiction.

Sec. 3. Be it further enacted, That the district courts shall have and exercise appellate jurisdiction and general control over such inferior tribunals as have been or may be established in each county, for appointing guardians, granting letters testamentary, and of administration for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates and original jurisdiction in probate matters, only in cases where the judge or clerk of probate is interested.

Sec. 4. Be it further enacted, That the judges of the district courts, and each of them, either in vacation or term time, shall have authority to grant on petition to them therefor, writs of habeas corpus, mandamus, injunction, sequestration, error and supersedeas, and all other remedial writs, known to the law, returnable according to law: provided, That no mandamus shall be granted on an *ex parte* hearing, and any peremptory mandamus granted without notice, shall be deemed void: And further provided, that all writs of mandamus, sued out against the heads of any of the departments or bureaux of government, shall be returnable before the district court of the county in which the seat of government may be.

Sec. 7. Be it further enacted, That the district judges, when the appropriate relief is prayed for, may grant all such orders, writs

² Laws of the First Legislature, 200.

or other process necessary to obtain such relief, and may also, so frame the judgments of the court as to afford all the relief which may be required by the nature of the case, and which is granted by courts of law or equity.

Justices' courts were established and given jurisdiction in civil matters involving one hundred dollars or less, authority to try which was not conferred exclusively on the district court. These courts also had jurisdiction of a few misdemeanors mainly breaches of the peace and minor offenses against the person in which the punishment could not exceed a fine of \$50. The power of the justices of the peace as committing magistrates was quite extensive.³

A probate court, consisting of one judge, was established in each county, upon which was conferred all powers ordinarily exercised by courts of that class.⁴

Under this constitution there was no county court with jurisdiction to try cases. A tribunal designated "the county court", composed of one chief justice and four commissioners, was created in each county. Its jurisdiction extended to all matters of county business and finances. It had no power to try causes between individuals.⁵

In the act organizing justices' courts (Sec. 20) the legislature declared that from final judgments of the justices' courts appeal should lie to the district courts; and in an act hereafter referred to, regulating practice in the latter, ample provision was made for the exercise of such appellate jurisdiction by them. Under the statutory enactments for several years appeals were actually taken from the justices' courts to the district courts and the cases were retained and tried there. In 1849, in the case of *Titus v. Latimer*⁶ the point was made that as the district court was created by the constitution and its jurisdiction defined therein, the legislature had no power to change such jurisdiction, either by adding to or taking from; and, as appellate jurisdiction in cases from the justices' court was not given to the district court by the constitution, the statutes attempting to confer it were void. The court was divided

³ Laws of the First Legislature, 298 et seq.

⁴ Laws of the First Legislature, 308 et seq.

⁵ Laws of the First Legislature, p. 333.

⁶ 5 Texas, 433.

in its opinion on the question, but the majority, Hemphill, C. J., and Lipscomb, A. J., sustained the point, Wheeler, A. J., dissenting. The opinion of the court was delivered by Judge Lipscomb. After stating the case, he says:

The importance of the question is sensibly felt and fully and frankly acknowledged; and it is a matter of serious regret that it should be suddenly sprung upon the court without the benefit of having it discussed at the bar. It is now nearly four years since the Legislature, at its first session, proceeded to organize Justices' Courts and define their jurisdiction, and, among other things, gave the right of appeal, as a matter of course, from their decisions to the District Courts. The same Legislature, at the same session, passed an act organizing the District Courts, and another regulating judicial proceedings in the District Courts. In the last, the manner in which appeals from justices of the peace are to be tried is defined and expressly provided for. In all the intervening time since those acts were passed they have been acted on and judicially recognized as valid without having ever before been questioned. If, however, they are repugnant to the constitution and could not give jurisdiction, neither the lapse of time nor the practice of the courts can vindicate the exercise of such jurisdiction.

Justices of the peace and other inferior tribunals are recognized by the Constitution; the extent of their jurisdiction, however, is left wholly to the Legislature. But the District Court and the Supreme Court, both as to their institution and jurisdiction, are essentially the creatures of the Constitution. On those courts the Legislature can neither confer or take away jurisdiction. If the jurisdiction given by the Constitution cannot be exercised because the mode has not been expressly provided for in the fundamental law of their creation, it would be competent for the Legislature to regulate the manner in which it should be exercised. But if the mode had been expressed contemporaneously, and by the same authority that created the jurisdiction, it would not be competent for the Legislature to direct a different mode. The Supreme Court is exclusively a court of appellate jurisdiction. The Constitution has conferred on it no original jurisdiction, nor can the Legislature confer any such, because it has been created by the Constitution an appellate tribunal only. The District Court is a court of original jurisdiction, and this original jurisdiction is not derived from nor dependent on the Legislature. All that can be done by the Legislature is to regulate the manner in which its jurisdiction shall be exercised. If the Constitution has not given it appellate powers it is not competent for the Legislature to do so. There is a very obvious distinction, to my mind, between controlling an inferior jurisdiction and the exercise of an appellate power: the former can be exerted to prevent action; the latter requires the act to be done before it can be appealed from.

Hence, when the 10th section of the IVth article of the Constitution confers the powers on the District Court and the judges thereof to 'issue all writs necessary to enforce their own jurisdiction and to give them a general superintendence and control over inferior jurisdictions,' it does not, from necessity or by reasonable inference, give them appellate jurisdiction. If it was intended to withhold general appellate jurisdiction, and not to give a control over inferior jurisdiction, it would have been difficult to have expressed that object in more appropriate terms than have been used. A control of the acts of those tribunals is expressly given by the issuance of writs very familiar to courts of general original jurisdiction. The writs of *certiorari*, *mandamus*, *quo warranto*, injunction and prohibition, would afford ready means of exercising control. Had it been intended that, in addition to the use of these writs, a general appellate jurisdiction should be exercised, it is certainly most probable that it would have been so expressed in the 10th section, as it is in the 15th section, in giving jurisdiction over the Probate Court.

Believing that the power to give jurisdiction by the act of the Legislature cannot be derived from the Constitution, there is no error in the decision of the court below in dismissing the appeal. Judgment affirmed.

Thus early in the history of our State were adopted and applied rules of strict construction of constitutional grants of power to the several courts created by organic law. These rules were most rigidly and consistently enforced in interpreting all our constitutions up to the amendments of 1891, and notwithstanding the evident intent to avoid them manifested in those amendments, their influence continues to be felt in some of the courts now existing.

The legislature at this first session also gave special attention to matters of practice in the courts, and passed an act, approved May 13, 1846, to regulate proceedings in the district courts, which comprised 158 sections, and covered the whole field of procedure in said courts, enumerating and repealing by name every former provision relating to practice in civil suits, but not repealing the act adopting the common law as to evidence and juries except so far as in conflict with it.⁷

The requirements of this act as to pleading are as follows:

Sec. 3. Be it further enacted, That all civil suits in the district court shall be commenced by petition filed in the office of the district court.

Sec. 5. Be it further enacted, That the petition may be filed by

⁷ Laws of the First Legislature, 363, Hartley's Digest.

the plaintiff or attorney and shall set forth clearly the names of the parties and their residences, if known, with a full and clear statement of the cause of action and such other allegations pertinent to the case as he may deem necessary to sustain the suit, and also a full statement of the nature of the relief requested of the court.

Sec. 29. Be it further enacted, That the defendant in his answer may plead as many several matters whether of law or fact as he shall think necessary for his defense and which may be pertinent to the case: provided, that he shall file them at the same time and in due order of pleading.

Sec. 32. Be it further enacted, That all pleas filed shall be taken up and disposed of by the court in due order of pleading under the direction of the court.

That the full force of this law may be appreciated it is well to consider the construction placed by our supreme court upon the prior acts of congress with reference to procedure, and particularly upon the words "petition and answer" as occurring therein. The case of *Underwood v. Parrott*⁸ was an action brought in the district court, apparently before the adoption of the constitution of 1845, though the decision of the supreme court was not rendered until the December term 1847. In this case Judge Wheeler speaking for the court says:

The act of 1840, "to regulate proceedings in civil suits," 4 Stat. 88, declares that, "the adoption of the common law shall not be so construed as to adopt the common law system of pleading but the proceedings in all civil suits shall, as heretofore, be conducted by petition and answer."

This provision was evidently intended not to prescribe the rules, but to designate the system of pleading to be observed in our courts. The attention of the legislature was directed to the fact, that different systems of conducting the allegations of the parties prevailed in different countries and in different jurisdictions in the same country. They had adopted as the body of our municipal law the common law of England, but they were averse to the system of pleading observed in the forums of that country; and recurring to the fact that a different system prevailed here with which the courts and bar was supposed to be familiar; and which was supposed to be more simple and equitable, and better adapted than the English system to attain the true and ostensible object of all systems of pleading—a just decision upon the merits of the matter in controversy—they determined to retain the existing system. Hence the antithesis which the last member of the sentence presents to the first; the words "petition and answer" being used in opposition to

⁸ 2 Texas, 178.

"the common law system of pleading," not to signify the stages of pleading to which these words give names, but to designate the *system* to which they belong. And, doubtless, to secure one uniform system of conducting the allegations of the parties, as well as to retain for that purpose the then existing system, they declare that the proceedings "in all civil suits", whether they would have appertained to the common law or chancery jurisdiction in England, "shall as heretofore, be conducted by petition and answer." These words then were not intended as a restriction or limitation of the pleadings to the answer, but as the designation of a system of pleadings—that being the subject present to the mind of the legislature, who were not treating of a declaration or plea, or of a petition or answer, but of the remedial systems in which those terms are employed, and which they describe; and they used them not to denote a prescribed formulary, but as indicative of their intention to retain the then existing system in opposition to the common law and chancery systems of pleadings in England. They retained the existing system without alteration, "to be conducted," in their own language, "as heretofore."

The inquiry then resolves itself into this: was a replication recognized by the laws anterior to the cited provision? By reference to the laws of the State of Coahuila and Texas, decree 277, sec. 6, art. 101, p. 266 of the laws and decrees, it will be found that the former laws upon the subject did permit the parties to employ the *republica* and *duplica*, answering to the replication and rejoinder of the English system; but to these they restricted the pleadings. And although the body of the former laws was repealed at the period of the adoption of the common law, 4 Stat. pp. 3, 4, yet the same legislature retained the system of pleading in opposition to that of the common law. Id. 88, sec. 1. That it is allowable, therefore, to carry the pleadings beyond the answer, I cannot doubt. In a case like the present, to reply the facts intended to be relied on in evidence to repel the defense disclosed by the answer, would seem most consonant to principle and convenient in practice. If the party must apprise the court orally of the facts intended to be relied on before he can insist upon the introduction of his evidence, why not put them in writing upon the record, not only for the information of the court, but to apprise the opposite party of the proofs he must be prepared to meet. This would seem more consistent with fairness and justice than to permit a party to assume mentally the basis of his proofs, and disguise and conceal them for the purpose of surprise and undue advantage. It would prevent confusion and embarrassment, surprise and injustice in the district courts, and would present the case in a far more intelligible form for revision here. It would disencumber the record of a mass of matter embodied in bills of exceptions and statements of facts; for it is only by these, in the

absence of pleadings, that the matters arising subsequent to the answer can be presented here for revision.

At the same session of the supreme court, the case of *Coles v. Kelsey* was decided, Justice Lipscomb rendering the opinion.⁹ In it he uses this language:

I do not believe, however, that on this subject we can with safety rely on common law rules of pleading, as our system of bringing suits by petition bears no analogy to the common law practice. But there is a most striking similarity in our forms to the English bill and answer in chancery, so much so as to leave no doubt of their kindred origin. They are both derived from the Roman law, out of which grew up the civil law, which now prevails all over continental Europe with various modifications; ours came to us through the laws of Spain. Judge Story says that equity pleadings were borrowed from the civil law, or from the canon law, which is a derivative from the civil law, or from both. Hence, at almost every step, we may now trace coincidences in the pleading and practice in a Roman suit. Story's *Equity Pl.*, sec. 14. The same author, section 23, says "an original bill praying for relief is, as we have seen, founded upon some right claimed for wrong done by the defendant, in order to enable the court to understand the case, and to administer the proper remedial justice, as well as to apprise the opposite party of the nature of the claim and of the redress asked, and to enable him to make the proper defense thereto, it would seem indispensable that the bill should contain a clear and exact statement of all the material facts."

This is a pretty accurate description of what a petition ought to embrace in our courts; in truth, to set aside a few set phrases, which are mere matter of form, there is no difference in their structure. There is, however, another reason that should recommend the chancery practice to our courts as rules of pleading in preference to that of the common law courts. It will be seen that the legislature has expressly directed that suits should be brought by petition, i. e., the act to regulate judicial proceedings in civil suits, section 1: "That the adoption of the common law shall not be construed to adopt the common law system of pleading, but the proceedings in all civil suits shall, as heretofore, be conducted by petition and answer." (See *Acts Congress 1840*, p. 88.) Thus in express terms it continues the former practice that had grown up under the civil law. And the 4th article, judicial department, section 10, of the constitution of the state, in granting jurisdiction to the district courts, directs that "it is to be exercised without regard to any distinction between law and equity;" this mixed jurisdiction must doubtless still more as-

⁹ 2 *Texas*, 542.

simulate our proceeding to the pleadings in chancery, as every cause of action must be asserted by the resort to the petition, to be modified to suit each particular case. I do not mean to be understood as maintaining that we have the chancery rules of pleading as a body, I only mean that they will be found more analogous to our system and more to be relied on, than those of the common law.

These cases show clearly that by "petition and answer" in the early laws of Texas is not meant the written instruments so familiar to the Texas practitioner under those names but a system of pleading, unique in its character, and without any exactly corresponding counterpart.

In the course of the many changes in our law—organic and statutory—this blended jurisdiction of law and equity in the same court and this system of pleading by petition and answer have remained unaltered.

The difference between this Texas method of procedure and the common law is too plain to need pointing out. The difference between this and the ordinary code system is also apparent. The Texas plan allows to both the parties and to the court the greatest latitude which is consistent with safety, and yet encourages the parties to make known to the court the very facts upon which they respectively rely, and puts a premium upon clear, concise and logical statement of these facts. It does not require the attorney for either party to determine in advance at the peril of his client whether his cause of action be technically legal or equitable, or in what form of action he shall proceed, or to select one issue upon which to risk the whole case; but permits him to present to the court every phase of the controversy and to ascertain whether or not, from any point of view, consistent with truth, his client is entitled to relief.

The constitution of 1845 was amended in 1850 so as to make the judicial officers elective; with this exception it remained unaltered until the convention of 1861, when it was modified so as to conform to the changed conditions arising from secession. As thus modified it constituted the state constitution during the existence of the Confederate government.

In 1866 another convention met in Austin and proposed certain amendments to the constitution, making it conform this time to the change growing out of the defeat of the Confederacy.

These amendments were voted on by the people on the fourth Monday in June, 1866, and were adopted, and the officers therein

contemplated were elected and entered upon the discharge of their duties. The congress of the United States, however, refused to admit Texas into the Union under this constitution, and the government formed under it was dissolved and a reconstruction government instituted and maintained under acts of congress. By this power a convention was called to frame another constitution to be submitted to the people and then to the Federal congress. This convention met in Austin on June 1, 1868, and adjourned Feb. 6, 1869. The constitution passed by it in its "Election Declaration" provided for its submission to the people on the first Monday in July, 1869, but the powers at Washington did not concur in this date. The president by proclamation of date July 15, 1869, ordered its submission on Tuesday, November 30, 1869. The time was again changed by the military commander, and the election in fact took place on Nov. 30, and Dec. 1, 2, and 3, 1869.¹⁰ The constitution was adopted, and, at the same time, the State officers and others contemplated therein were elected. The legislature met Feb. 25, 1870, and adopted the thirteenth, fourteenth, and fifteenth amendments to the constitution of the United States. By act of congress approved and taking effect March 30, 1870, Texas was restored to full fellowship in the United States.

The judicial system under this constitution was as follows:

Section 1. The Judicial power of this State shall be vested in one Supreme Court, in District Courts, and in such inferior courts and magistrates as may be created by this Constitution, or by the Legislature under its authority. The Legislature may establish criminal courts in the principal cities within the State, with such criminal jurisdiction, co-extensive with the limits of the county wherein such city may be situated, and under such regulations as may be prescribed by law; and the Judge thereof may preside over the courts of one or more cities, as the Legislature may direct.

The supreme court consisted of three judges and had appellate jurisdiction only. In civil cases, this was coextensive with the limits of the State. In criminal cases, no appeal was allowed to the court, unless one of the judges, upon inspection of the record, believed that some *error of law* had been committed in the trial. The district courts had all the jurisdiction now exercised by both district and county courts. The judges of the supreme and district courts were appointed by the governor.

¹⁰ 2 Pasch. Laws, note 1227.

At this period in our history it seems to have been a mooted question whether rendering jury service was to be looked upon as a right to be guaranteed to the citizen or a duty imposed on the juror in the interest of the public. The framers of this constitution inclined to the former view, at least as to certain classes of citizens and hence we find it ordaining in sec. 45, art. 12, that: "All the qualified voters of each county shall also be qualified jurors of such county." As the constitution itself fixed qualifications of voters, the legislature, even if disposed, was powerless to prescribe any qualifications for jury service. Under conditions as then existing not much relief could be reasonably hoped from the legislature. In 1871 a law was passed with reference to juries which while doubtless not specifically so intended, was admirably adapted to placing incompetent and bad men in the jury box. The names of all the qualified voters in each county were to be placed on a list by the county court. No intelligent selection was to be made, nor indeed, any selection of any kind, but the name of every citizen possessing the constitutional qualifications as a voter was required to be entered on this list. Then each name so entered was to be written on a separate slip of paper and these slips placed in a box, and before the adjournment of each term of the district court, the grand and petit jurors for the next term were to be obtained from these by drawing from this box the slips of paper containing the name, each name so drawn being entered on the list. The lists so made were to be entered of record on the minutes of the court, thus giving every one immediate information as to who the jurors were. Clearly the leading idea of the law-makers in the enactment of this statute was to prevent discrimination against any citizen or class of citizens in the performance of jury service. The misfortune was that while it cut off opportunity for unjust and unlawful discrimination, it was equally effective in shutting off discrimination based upon just and lawful grounds. Under it not only were the names of the incompetent and corrupt men on the slips as likely to be selected as any others, but questions of moral character could not be considered at all unless the party had been convicted of a felony, and had thus disqualified himself from voting. The practical working of the law was bad, but no relief of any consequence came until the days of reconstruction were passed, and the adoption of the constitution of 1876 which, on this subject completely changed the above policy. The

framers of this constitution instead of repeating section 45 as quoted above, substituted this mandate "the Legislature shall prescribe by law the qualifications of grand and petit jurors". In August, 1876, assembled the first session of the legislature under that constitution. In obedience to this requirement it passed a jury law which was a marked improvement on its predecessors. The qualifications of a juror were specified. He was required to be a voter, a freeholder within the state, or a householder within the county, of sound mind and good moral character, must not have been convicted of a felony, must not be under a legal accusation of theft or felony, and in counties where voters were numerous, inability to read and write or previous service as a juror for a designated period within six months, before his selection, were made additional disqualifications. The act also provided for the selection by the district and county judges, respectively, of three properly qualified citizens of the county, residents in different portions, as jury commissioners. These persons were to be summoned before the judge immediately upon their appointment. They were sworn as officers and charged by the court as to their duty and were required to select only men who were known to them and who, upon careful consideration, were, in their judgment, qualified in character and intelligence to render efficient service as jurors. The lists of the parties selected were sealed up and delivered to the clerk in open court, oath was taken by the clerk and the commissioners not to divulge the names of the parties selected nor permit the opening of the lists until just before the beginning of the court. By these means each person who was to render jury service was passed upon by three disinterested men, selected by the judge, because of their special fitness, and the names of the persons so selected could not be ascertained until just before the service was to be rendered. Even a casual comparison of this law with that superseded by it shows the very great improvement made by it.

By joint resolution of June 4, 1873, an amendment to the judiciary articles of the constitution was submitted. This increased the number of supreme judges to five, and did away with the provisions denying the right of appeal in criminal cases unless some supreme judge should think an error of law had been committed. It was adopted on December 2, 1873.

This constitution and its amendments were in turn superseded by that under which the government is now being administered, known as the constitution of 1876. This was formulated by a convention which sat in 1875 and was submitted to the people and adopted on February 15, 1876, and by its own terms became operative on April 18, thereafter.

The judicial system created by this instrument (in its original form) comprised two courts of last resort, namely, the supreme court and court of appeals. The first consisted of three judges and had appellate jurisdiction of all civil cases tried in the district courts, but no jurisdiction in criminal cases or in appeals from the county court. The second consisted of three judges and had appellate jurisdiction in all appeals in all criminal cases from the district, and of all appeals from the county court, in both civil and criminal matters. There were four classes of courts of original jurisdiction, namely, district, county, county commissioners', and justices'. The jurisdiction of all of these was, in many respects, the same as the courts of the same designations under the present law.

This constitution made all judicial officers elective.

With the development of the State, and the growth of its population and business, the volume of litigation increased so much that it was found impossible for the supreme court to dispose of the cases brought before it. It was apparent that relief in some form must be provided for the unreasonable delay of justice, which in many cases amounted to a denial of all practical relief. Resort was had to a commission of appeals, consisting of three lawyers appointed by the governor, who were to sit as a commission, and to whom were to be referred causes pending before the supreme court, and civil cases pending in the court of appeals, in which the parties should agree to such transfer. The decision of these cases by the commission was to be final without examination or approval by the supreme court. The act creating this tribunal was approved July 9, 1879.¹¹

Serious questions were raised as to the constitutionality of this act, but the majority of the supreme court construed it as creating a board of arbitrators and not a court and sustained the law.¹² By its own terms this act was to expire in two years. The next session

¹¹ Acts of the Special Session, Sixteenth Legislature, p. 30.

¹² *Henderson v. Beaton*, 52 Texas, 29.

of the legislature offered an amendment to the judiciary article of the constitution, which, among other changes, proposed to increase the number of the supreme court to seven judges. The adoption of this amendment being doubtful, the legislature, by act of July 9, 1881, provided for a continuance of the commission, making, however, material changes in the law. The reference of cases was no longer confined to those agreed on by the parties, but the supreme court and the court of appeals were authorized to refer cases to it, without such consent; the power to finally determine cases was taken away and the decisions of the commissioners were required to be submitted to the supreme court and were not to be valid unless approved by it; so when adopted the opinions were to be published officially, and the judgments were to be rendered by the supreme court in conformity with the decisions. This act was also attacked as unconstitutional, but was again sustained; this time on the theory that, while the voluntary feature of the former law, upon which it had been sustained, was eliminated, yet the denial of the right of final determination of questions by the commission, and requiring all decisions to be approved by the supreme court, made the law valid.¹³ The proposed amendment to the constitution was voted on in September, 1881, and defeated. The commission of appeals was continued from time to time until by act of April 8, 1891, two sections of three judges each, were created. It soon became apparent that it required a very large share of the time and attention of the supreme court to examine and pass upon the work of the two commissions and that the continuance of that policy by increasing the number of commissions would soon result in practically depriving the supreme court of any opportunity to consider and decide cases upon its own investigation. Some change seemed imperative. The legislature submitted amendments to the judiciary article of the constitution, which were voted on and adopted in September, 1891. These are the present constitutional provisions on this subject.

The changes wrought by these amendments are great. The present system consists of one supreme court, having civil jurisdiction only, and whose duty it is to revise decisions of the courts of civil appeals in enumerated classes of cases, and to hear a few classes of original suits against the heads of departments and State officers; a court of criminal appeals, having appellate jurisdiction of

¹³ *Stone v. Brown*, 54 Texas, 330.

all criminal cases tried in the district and the county courts, but having no civil jurisdiction whatever; courts of civil appeals, having appellate jurisdiction of all cases tried in the district and county courts, and whose decisions in many classes of cases are final, and in others are subject to review and correction by the supreme court; district courts, having jurisdiction over the larger share of civil litigation of importance, and of criminal cases of the grade of felony, and of all suits and complaints, jurisdiction over which is not expressly conferred on some other tribunal; county courts, having jurisdiction of civil matters of less importance than those committed to the district court, and of all matters of probate, and of misdemeanor cases; justices' courts, having jurisdiction over all civil litigation involving less than two hundred dollars and not committed to some other court, and criminal jurisdiction of misdemeanors where the penalty does not exceed a fine of two hundred dollars; and a county commissioners' court, having jurisdiction over all county business matters.

The most material of these changes are: to deprive the supreme court of immediate jurisdiction in cases appealed from courts of original jurisdiction, and confine it to the hearing of designated kinds of cases coming from the courts of civil appeals, and to give to it original jurisdiction in certain kinds of cases against heads of departments of the State government, when the legislature should so provide; to create a court of last resort in criminal cases without any civil jurisdiction; to create courts of civil appeals, to which all appeals from district and county courts in civil cases lie; and to give to the district court original jurisdiction of all suits that are not within the expressed jurisdiction of some other court. Some of these changes, particularly the creation of the courts of civil appeals with final jurisdiction over so many cases, have been somewhat severely criticised, but in actual experience the plan seems to be working well. The courts have been enabled to decide cases submitted within a reasonable time thereafter, so that now it is practicable to bring suit and have it finally determined in time to insure beneficial results from the litigation for the party who shall prove successful.

Whatever may be its defects, its practical working is better than any plan heretofore adopted, and he who desires to change it, must come prepared with a substitute which gives promise of better results.

ENDURING LAWS OF THE REPUBLIC OF TEXAS. II.¹

C. W. RAINES.

[In the preparation of this paper I have consulted the Journal of the Consultation, 1835, the Journal of the Convention, 1836, the Journals and Laws of the Congresses mentioned, and the archives in the Department of State, Austin.—C. W. R.]

The law for the present location of the seat of government in Texas is the first subject of the present paper; but before setting it out in full I shall enumerate, as a matter of interest, all the preceding capitals of American Texas with the circumstances which led to their selection as such.

Of the three departments into which Texas under the Mexican regime was divided, Bexar was practically all Mexican in race and sentiment; Nacogdoches had a large Mexican leaven; but Brazos was heart and head American. It was this department embracing Austin's colony that threw down the gauntlet of defiance to the usurping Santa Anna in 1835 and called for a consultation of all Texas at San Felipe de Austin.

The Brazos influence easily dominated the consultation, as Bexar failed to have any delegates therein, and it abolished the departmental system, making Texas a central republic, one and indivisible. Santa Anna was denounced for warring against the constitution of 1824, and a provisional government was established for Texas at large and San Felipe de Austin, the capital of Austin's colony, and the capital of the department of Brazos as well, became *de facto et de jure* the first capital of American Texas.

In despair of the Federal system in Mexico, the people of Texas through their representatives met in 1836, on the call of the provisional government, in Washington on the Brazos. Not a consultation was this, but a convention or constituent assembly in which all the powers of sovereignty were claimed and exercised in the declaration of independence and the formation of a constitution and the inauguration of a full corps of executive officers. After a

¹ See THE QUARTERLY for October, 1897.

stormy session of seventeen days beginning March 1, the Convention dissolved before the advance of Santa Anna's legions.

President Burnet for convenience selected for the seat of government Harrisburg on Buffalo Bayou, to which place he promptly repaired with the archives and part of his cabinet.

The deflection up the Brazos of the retreating Texan army left Harrisburg open to the enemy, and Santa Anna with 750 men made a dash on the capital. Arriving at 11 p. m. April 13th, the Mexican dictator learned that President Burnet and other officials had taken the archives and fled down the Bayou that afternoon in a steamboat. No official documents issued from the ephemeral capital, Harrisburg, save a few executive orders and proclamations.

It becomes difficult now to fix the exact *situs* of the Texan capital though the perambulations of the president may mark it with approximate correctness.

Despairing of Santa Anna's being arrested by a battle of Houston's fighting, Burnet with part of his cabinet abandoned the main land of Texas and taking refuge on Galveston island offered to share with the General the comforts of that sand-bank retreat if he deemed it still imprudent to give battle. But the long delayed fight for Texas at last came off at San Jacinto, effectually check-mating the further Mexican advance. Then the sovereignty of the Republic as represented in the person of the president was soon transferred from the sea-coast to the battlefield. Meanwhile the captive dictator by the arts of diplomacy retrieved in a measure the Mexican fortunes in effecting an arrangement with his conqueror for the unmolested retirement of the Mexican army across the Rio Grande. To this arrangement between Houston and Santa Anna President Burnet assented; and to fully consummate the proposed treaty the sovereign heads of Mexico and Texas hastened away on the historic steamer *Yellowstone* to Velasco, then the great seaport of the Republic.

In this capital (for the president and archives were here) was concluded and signed in person the agreement between Santa Anna and Burnet, known as the treaty of Velasco. The ill will towards the butcher of the Alamo and Goliad was so intense that his liberation under the provisions of the treaty was defeated by a popular commotion, which growing in virulence menaced the stability of the Texan government.

Wearied with the clamor of faction, President Burnet ordered in July the first general election under the constitution, and the officers elected met under his call in October at Columbia and organized the permanent government of the Republic.

Meanwhile the enterprising Messrs. Allen were laying out a new town called Houston at the head of navigation on Buffalo Bayou. What influences may have been brought to bear upon the government are not now known. It is certain, however, that the seat of government was, on December 15, 1836, ordered removed from Columbia on the Brazos to the town named in honor of the new President, where it was to remain from April 10, 1837, till the meeting of congress in 1840. And the president was authorized to cause to be erected the necessary buildings for the accommodation of the congress and of the different departments of the government at the place selected; provided the sum or sums so expended should not exceed \$15,000. So the capital of Texas remained only about three months at Columbia, where the government of the Republic first went fully into operation.

The following account of the proceedings is given in the Senate Journal of the first Congress:

"The two houses in joint session in the Representative chamber proceeded to vote *viva voce* for the location of the seat of government.

	FIRST BALLOT	SECOND BALLOT	THIRD BALLOT	FOURTH BALLOT
Nacogdoches	4 votes	.....	1 vote	.....
Hidalgo	1 vote	1 vote	.....	.....
Matagorda	8 votes	7 votes	7 votes	4 votes
Houston	11 votes	17 votes	19 votes	21 votes
Washington	7 votes	12 votes	13 votes	14 votes
Velasco	3 votes	.....	.....	.....
Refugio	1 vote	.....	.....	.....
Goliad	1 vote	.....	.....	.....
Bexar	3 votes	1 vote	.....	.....
San Patricio	1 vote	.....	.....	.....
Fort Bend .....	.....	1 vote	.....	.....
Columbia .....	.....	.....	.....	1 vote

Twenty-one being a majority of the whole number polled, the town of Houston was declared by the speaker of the house of rep-

representatives to be duly chosen as the place at which the two houses of congress had fixed the seat of government till 1840.

The congress met in the unfinished capitol building at the town of Houston on the 1st of May, 1837. It seems to have been thought that, because the law placed at the disposal of President Houston the sum of \$15,000 for the needed public buildings, the government would erect its own capitol. On the contrary, a rental of \$5,000 per annum was paid by the Republic to the Messrs. Allen for their building. Whether from this or from some other cause I do not know, opposition to the new capital soon began to show itself, and in a little more than a twelvemonth after there was a spirited contest for the honor temporarily conferred on Houston among Black's Place, Bastrop, San Felipe, Nacogdoches, Comanche, Mound League, and Eblin's League¹ as rival sites. The last was chosen by the second congress as the permanent seat of government for the Republic. The joint resolution to this effect perhaps fell through for want of the president's approval, as it does not appear among the printed laws of the Republic.

It was not until the session of the third congress that the question of a permanent capital was definitely settled. On the 19th of January, 1839, President Lamar approved the act herein described as one of the enduring laws of the Republic. It was entitled "An act for the permanent location of the seat of government," and reads thus:

Section 1. Be it enacted by the Senate and House of Representatives of the Republic of Texas in Congress assembled:

That there shall be and are hereby created five commissioners, to be elected two by the Senate and three by the House of Representatives, whose duty shall be to select a site for the location of the seat of government, and that said site shall be selected at some point between the rivers Trinidad and Colorado and above the old San Antonio road.

Sec. 2. *Be it further enacted*, That the name of the said site shall be the City of Austin.

Sec. 3. *Be it further enacted*, That said commissioners or a majority of them be, and they are hereby required, to select not less than one nor more than four leagues of land for said site, and if the same cannot be obtained upon the public domain or by individual donation, then and in that case the said commissioners shall purchase the

¹ In Fayette county on the east side of the Colorado below La Bahia crossing.

aforesaid quantity of land from any person or persons owning the same: *Provided*, that the price of the land so purchased shall not exceed three dollars per acre: *And further provided*, That not more than one league shall be purchased at such a price as three dollars per acre.

Should the site, however, be on individual property and the commissioners be unable to purchase it according to the authorized terms, they should proceed to acquire it under the law of condemnation as expressed in the act.

The salary of the commissioners while at work was to be eight dollars per day, but before beginning their labors they were to enter into bond with good security of one hundred thousand dollars each to be approved by the president, payable to him and his successors in office, conditioned on the faithful performance of the duties of their office, and take an oath to "faithfully and honestly" perform those duties.

Section 9 of the act required, "That immediately after the president receives the report of the commissioners, it shall be his duty to appoint an agent, whose duty it shall be to employ a surveyor at the expense of the government and have surveyed six hundred and forty acres of land on the site chosen by the commissioners into town lots under the direction of the president, which shall be by said agent advertised for sale for ninety days in all the public gazettes of the Republic, and also in the New Orleans Bulletin and Picayune, etc.

Section 12 made it the duty of the agent before the sale of said lots to set apart a sufficient number of the most eligible for a capitol, arsenal magazine, university, academy, churches, common schools, hospital, penitentiary, and for all other necessary public buildings and purposes. An act supplementary to the above and approved January 23, 1839, authorized the president to "have at the capital selected such buildings as he may deem necessary for the accommodation of the fourth annual congress of the Republic, together with the president and cabinet and other officers of the government," and further made it the duty of the president, together with his cabinet officers, to proceed to the capital with the archives of the government previous to the first day of October, 1839. For the purposes of this supplemental act the sum of \$20,000 was placed at the disposal of the president.

The commissioners selected by the Senate were A. C. Horton and I. W. Burton, and those selected by the House of Representatives were William Menefee, Isaac Campbell, and Louis Cooke. Edwin Waller was the surveyor. These gentlemen entered upon their duties with all convenient dispatch in the designated territory. According to their report² of April 1, 1839, to the president, the site of the hamlet of Waterloo, on the left bank of the Colorado, was selected as the proper place for the permanent seat of government, and a tract of land consisting of one league and two-thirds of a league and two labors, or about 7000 acres, was purchased at the maximum price of three dollars per acre.

The report is lengthy and somewhat verbose and grandiloquent in expression. The fertility of the soil, the beauty of the situation, the salubrity of the climate, and the grand mountain scenery are all noted by the enraptured commissioners, and, while stating that the chosen site for the capital is directly on the great trail of Mexicans and Indians from East Texas to Matamoras and at its intersection with the main route for trade between the Gulf of Mexico and Santa Fe, they fail not to enlarge on the prospects of building upon this spot a great national city.

Later on, an area of one mile square extending from the river into the open prairie was surveyed by General Edwin Waller and laid out in lots for the prospective city of Austin, and the public buildings were erected on contract in due time. In October the president and cabinet approaching the new capital were welcomed by a crowd of citizens headed by Ed Burleson and Albert Sidney Johnston and escorted into the city. The distinguished officials were royally entertained at Bullock's Hotel, where were gathered the beauty and chivalry of the Republic. "The elegant dinner," (we are told), "provided under the immediate supervision of Madame Bullock reflected great credit on that lady's taste and superior judgment, displayed in the arrangement of the table and the delicacies which graced the festive board."³

The fourth congress convened at the new capital on November 11, 1839.

The present city hall on the northeast corner of Eighth and Colo-

² Box No. 33, vault No. 2, archives Department of State, Austin.

³ Austin City Gazette, Oct. 30, 1839.

rado streets, stands on the site of the first capitol building erected under contract for the Republic. It was a one-story frame structure of two large rooms separated by a wide corridor with offices in the rear for committees. From the gallery on the entire front of the building there was an unobstructed view to Congress Avenue, then, as now, the main thoroughfare of the city.

The Executive Mansion, where St. Mary's Academy now stands, was a neat two-story frame building painted white. It appears to have been the most stylish of the public buildings of the period; though occupied by only two presidents, for a short while by Lamar and for a still briefer period by Houston. The other government edifices were generally log cabins scattered along Congress Avenue.

With the succeeding administration came trouble to the town of Austin in an attempt of the seventh congress to remove the capital further back within the settlements. Disquieting rumors of a Mexican invasion perhaps causing this action against Austin, hastened, without doubt, the adjournment of congress. The Vasquez raid early in March, 1842, of seven hundred Mexican guerrillas on San Antonio furnished the pretext for executive interference. Under the clause of the constitution which provided for the removal of the archives from the seat of government in cases of emergency in time of war, the president issued his order of March 13 from Galveston for the return of the archives to the city of Houston for security. A few weeks after the more serious raid of Woll in September, the archives by executive order were sent off to Washington. Thus after divers and sundry dire perambulations on land and water over the Republic the archives first swelling and then sinking in volume, completed the circle in getting back to the capital so unceremoniously abandoned six years before.

The dreaded guerillas not taking San Antonio any more, the archives had no further cause for removal till annexation, and remained at Washington. In default of better accommodations here the houses of congress were forced to use the upper apartments of two grog-shops for their sessions during the closing days of the Republic.

As to the legality of the first removal of the archives from the seat of government, I will content myself with observing that the constitution warranted a removal in case of emergency; but it was not generally believed even then that the report of seven or eight

hundred Mexican raiders in exciting fight eighty miles distant made the emergency contemplated. Nor is it my purpose to discuss in this paper the merits of the unseemly squabble over this removal between the archive committee and President Houston. However, it may be of interest to note that the discomfiture by the people at Austin of the military company sent out by the president to surreptitiously complete the removal of the archives, closed the forcible and unlawful efforts to change the seat of government.

But few even of those who justified the first removal of the archives would now defend the continued opposition of the two last presidents to the restoration to their proper place of custody at the legal capital.

Annexation, making ridiculous the further plea of the danger of Mexican raids, restored the lost prestige of Austin. The convention provided, in the constitution adopted, that Austin should remain the seat of government for the state till 1850, when the permanent capital should be determined by popular vote. In the election of that year to determine the question, Austin easily distanced all her competitors, receiving 7674 votes, while 1854 were cast for Palestine, 1143 for Tehuacana and a scattering vote for Washington, Huntsville, and other places. It required a majority of all the votes polled to elect, and Austin was chosen by about 1000 majority of the whole vote counted. The election, however, did not definitely settle the matter, as it was provided by law that the question should be submitted to the result of another election twenty years later. The State being at that time in the throes of reconstruction the question was not again submitted to the choice of the people till at the general election of 1872. The result showed for Houston, 35,188 votes; Waco, 12,776; and Austin, 63,297, or a clear majority of the whole vote. The city of Austin was accordingly declared to be, by popular choice twice expressed in a legal manner, the permanent seat of government of the State of Texas.

Since then there has been no serious attempt to disturb the verdict of the people on this matter now considered settled. Finally, the wisdom of the framers of the act in 1839 for the permanent location of the seat of government being so amply vindicated up to this time, the act itself is rightly classed among the enduring laws of the Republic.

On January 14, 1839, was approved by President Lamar "An act amending an act entitled an act adopting a National Seal and Standard for the Republic of Texas." The original act approved in 1836 was but a substantial embodiment of President Burnet's order from Harrisburg prescribing the national standard. The substance of the act is in the subjoined portion:

Section 3. Be it further enacted that from and after the passage of this Act the national flag of Texas shall consist of a blue perpendicular stripe of the width of one-third of the whole length of the flag with a white star of five points in the center thereof; and two horizontal stripes of equal breadth, the upper stripe white, the lower red, of the length of two-thirds of the whole length of the flag; anything in the act to which this is an amendment to the contrary notwithstanding.

This is the present Lone Star Flag of Texas. Though coming after the triumphs of Bexar and San Jacinto, it sprang at once into great popularity. In all the subsequent battles of the Republic around Bexar and on the border from Santa Fe to Mier, the Lone Star Flag represented the sovereignty of Texas. It was not till February, 1846, that it was hauled down from the flag-staff of the old wooden capital of the Republic by Texan hands to give place to the Stars and Stripes. A flag though but a piece of bunting is an emblem of nationality; and the flag logically disappears with the death of a nation, as in the case of Poland, or with the blasted efforts for national life, as in the case of Hungary and of the Confederate States. The subsequent display of their defunct flags by those beaten communities might be a cause of offense to their conquerors.

Not so, however, with Texas. The demise of the Republic, or rather the merger of its sovereignty into that of the Union, was wholly voluntary; annexation itself being the joint act of two friendly sovereignties. Their flags never joined issue in battle. So the Lone Star Flag waving on stated occasion over the dome of our magnificent capitol, is no menace to the Union. This flag is simply a reminiscence, typifying the glories of the old Republic and the display of its bright folds in the sun never fails to awaken enthusiasm in all true Texans.

From the foregoing would it not follow that the law creating the flag became obsolete on the demise of the Republic? Perhaps so, technically speaking; but in a larger and better sense, the law had

become *functus officio*, its object having been effected, and had become on the disappearance of the nation incapable of reform or repeal. Or transferred from perishing paper to the fleshly tablets of the heart, the law makes the Lone Star flag immortal, because the Texans will have it so. But aside from sentiment, does not the flag foster nationality? Undoubtedly, but as already remarked, as a cherished reminiscence only with but the innocent tendency to hold our territorial integrity inviolate.

And this in turn tends to settle the seat of government. It is inconceivable that the City of Austin, bearing the honored name of the father of the Texan colony, ^{is} ~~situ~~ ^{ate} approximately to the center of territory and population of the State and possessing one of the costliest capitols in the Union could ever cease to be the seat of government of Texas; so long as the sentiment of nationality is unimpaired with the indivisible glories of Bexar and San Jacinto and the unspeakable sacrifices of the Alamo and Goliad alike indivisible.

Whatever may befall Texas, the Lone Star flag will forever live in song and story. To have devised such a flag was a greater honor to Oliver Jones, its author, than any other act of the long and useful life of this noble type of Austin's "Old Three Hundred."

Of the permanence of the laws herein noted, no better reminder could be had than this flag floating over the capitol at Austin on the national holidays of the old Republic.

NOTES ON THE HISTORY OF LA BAHÍA DEL ESPÍRITU SANTO.

BETHEL COOPWOOD.

Official notes, entries, and reports made when the events occurred, being the lighted torch of actual observation and practical experience, enabling subsequent writers to correct or avoid popular errors, this article is intended to call attention to some Spanish data of this kind, with notice of the places where same may be found, without reflection upon anything heretofore written on the subject by authors of Texas history.

Under orders from Francisco Garay, then governor of Jamaica, in 1518-1519, Alonso Alvarez de Pineda ran the whole gulf coast from the southern cape of Florida to the mouth of the Pánuco river, and made a chart of it, showing thereon a bay he called "la Bahía del Espíritu Santo," and noting some of the most prominent points in its surrounding topography; and it is probable that Pánfilo Narvaez had a copy of this chart when he sailed from Florida in 1527; for Alvar Nuñez Cabeza de Vaca says of the bay where he and Lope de Oviedo first heard of their three countrymen being with another tribe: "By what appeared to us from it and what we saw, it is the one called de Espíritu Santo," showing that he knew already that there was a bay on that coast called by such a name.

In 1561, by virtue of a royal cedula, Angel de Villafañe and Jorge Seron ran the same coast and made a descriptive chart of it, the original of which exists in the archives of Mexico. It also shows the same bay in about the same manner Pineda's does; and in view of it many consultations of the Consejo de Indias, information given by the viceroy and cédulas of the king were conceived in relation to the gulf coast.

Whether La Salle had copies of or extracts from these charts, which had been in the public archives of Spain and Mexico for over 120 years before he sailed for the mouth of the Mississippi, and knew its bearing from such sources, but was deceived by the effect of the gulf currents on his ships, of which he was ignorant, may

not be certainly known now. But it is true he landed far to the westward of his aim; a circumstance having a direct connection with the history of la Bahía del Espíritu Santo.

Having landed and selected the site of his Fort St. Louis, La Salle sent out Jean Henrie to explore the country to the westward; and this man's experience and conduct form an important link in the chain of circumstances identifying Fort St. Louis with the "Presidio de la Bahía del Espíritu Santo." After considerable exploration and the formation of an alliance with an Indian tribe, he was captured by Spanish scouts from Monclova and taken to Monterey and thence to the City of Mexico, and there made a detailed statement of all he knew of La Salle's expedition. And so minute was his description of the place where the French landed and of the site of the fort, that from the descriptive charts of the coast then in the archives, the viceroy readily determined it was on Espíritu Santo bay; and he immediately sent orders to Alonso de Leon, then governor of Coahuila, to march to Texas with what troops he already had and such as he could readily equip, to take from the French the lands they might have appropriated in the province and drive them out, or exterminate them, in order to secure the dominion and possession of New Spain in that region. And by means of such description de Leon was enabled to march directly to the French fort, where he arrived April 22, 1689, and found it already destroyed and the Frenchmen massacred, as he stated in his letter of May 16, 1689, to the viceroy, in which he asked for prisoners and permission to construct presidios to preserve the conquest of the country.

Some of the Frenchmen having escaped the massacre, obtained the compassion of a tribe of Indians near there, and were living with them when the Spaniards arrived. Two of these sought the protection of the Spaniards to get out from among the Indians, and were received with benevolence by Alonso de Leon and sent to the City of Mexico, where they gave the government detailed accounts of the sad events that happened to the French expedition in which they had figured.

With such sources of information, after having stood upon the ruins, de Leon certainly knew the site of Fort St. Louis, and there being no reason why he should misrepresent it, his report of its locality may be believed. His standing as an officer of the royal

army and as the king's deputy in the province of Coahuila depended upon the truth of his statements in his report, and he cannot be presumed to have dealt in falsehood in regard to such matters.

The viceroy having granted the request of the letter of May 16, 1689, Alonso de Leon made another campaign to Texas in 1690 with 150 soldiers and a number of priests and other people to establish towns, presidios, and missions deemed convenient for the defense of the country and the conservation of the Spanish dominion therein. And among others founded, was the presidio and mission of la Bahía del Espíritu Santo upon the ruins of the French Fort St. Louis, which continued to be occupied until the French invasion caused the few colonists, priests, and converted Indians of this, as well as those of the other missions, to retreat to San Antonio de Bexar.

Then, under orders from the viceroy, the Marquis de San Miguel de Aguayo, who had succeeded Alonso de Leon as governor of Coahuila, with 500 cavalry and six pieces of artillery, marched against the invading Frenchmen, to drive them back to their ancient possessions and leave the limits well defined, so that they might be respected by the authorities of New Spain and those of Louisiana.

In Bexar, the priests and the families of citizens who had abandoned the frontiers, united with the expedition of the marquis.

After successfully marching to the borders of Red River without encountering any resistance from the French, the Marquis received a royal cedula containing, among other things, the following instructions: "That inasmuch as a treaty of peace had been agreed upon in the Spanish and French cabinets, the war against the Gallo-Americans should not be further prosecuted on the frontiers of Mobile; that he should only secure the recovery of the province of Texas, settle it in the best manner possible, and fortify it, especially at la Bahía del Espíritu Santo:" showing that the King of Spain then knew of the establishment of that name.

Under these instructions, the marquis withdrew his troops from their threatening position before the French, and engaged in the restoration of the presidios and missions they had demolished; and among others, he ordered to be fortified in the best manner then possible, the presidio of San Antonio de Bexar and that of la Bahía del Espíritu Santo; the latter, as he says, having been erected at the same place where Roberto de la Sala built the presidio of San

Luis which had been demolished by the Indians. So wherever La Salle's Fort St. Louis stood, there the presidio of la Bahía del Espíritu Santo was first founded; and if known events that followed identify the spot, the careful historian may point it out.

After Escandon was commissioned to carry on the conquest and settlement of Nuevo Santander, he sent a captain with soldiers and settlers to take possession of la Bahía del Espíritu Santo, claiming it as within his territory, and held it until ordered to remove his people to the south side of San Antonio river, then declared the boundary. This order was obeyed by Captain Basterra's removing the troops, settlers, missionary priests, and converted Indians, together with everything movable, including the bell, door, and name of the place, and placing the establishment on the south side of the San Antonio river opposite the site selected for the new town of Balmaceda at Santa Dorotéa.

The royal engineer, Don Augustin Lopez de la Cámara Alta, made a map of Nuevo Santander, including in the northeastern portion of it the ancient site of the "Presidio y Mision de la Bahía del Espíritu Santo," showing it on the right margin of the "Rio de Guadalupe," and placing the site of Santa Dorotéa on the left margin of the "Rio de San Antonio," also showing the Espíritu Santo bay into which the two rivers emptied. It also contains a tracing of the route of the troops in going to the presidio and mission on the Guadalupe. It was filed in the archives at Mexico, in connection with the report of Don José Tienda de Cuervo, royal inspector general, in 1757, and is still intact in volume 29 of the historical branch of the general archives.

In volume 55 of the same archives there is a report made by Escandon with a tabulated statement of the towns, etc., he had established, containing these words: "Villa de Balmaceda en Santa Dorotéa. * * * A este paraje se removi6 el Presidio y Mision de la Bahía del Espíritu Santo." (Town of Balmaceda at Santa Dorotéa. * * * To this place the presidio and mission of la Bahía del Espíritu Santo were removed.)

In one of his reports to the viceroy, Escandon recommended the reduction of the salaries of the captains of some of the new towns, among them "el presidio del Espíritu Santo," at which place he also proposed to establish a new town. And he also shows that after founding the town of Reynosa, he sent orders to the captain of the

troops of Espiritu Santo, Juan Orobio y Basterra, to found the projected town on the Nueces river with the families that had gone out from Nuevo Leon.

In an application for a grant of land, made by Captain José Vasquez Borrego in 1750, in mentioning the settlements and their courses and distances from the land he asked for, he mentions "la Bahía del Espíritu Santo, now removed to Santa Dorotéa," showing that he then knew of this removal. And a testimonio of this application is in the proceedings or expediente of the title among the ancient Spanish archives of Laredo, Texas.

After the removal it continued to be a presidio within Nuevo Santander until the boundary was changed to the Nueces river by a decree first adopted in 1805.

By the royal decree of September 10, 1772, the presidio of la Bahía del Espíritu Santo was made a "plaza fuerte" among the number composing the cordon of such it established from the Gulf of California to the Mexican Gulf, and it continued to be such as long as Spain held dominion over the country.

While a full account of how Bernardo Gutierrez de Lara came to be in the presidio of la Bahía with a force of about 700 men would be too great a digression here, still it would form a most interesting chapter in the life of that Mexican patriot, or in a history of the campaign inaugurated by him and lost by Toledo in Texas.

Having raised at his own expense about 500 men, principally from Kentucky, Tennessee, Mississippi, and Louisiana, including some Frenchmen and Spaniards, and among the Americans, as officers, such men as Magee, Kemper, Lockett, Perry, and Ross, brave men with some knowledge of the art of war as then practised, Gutierrez de Lara proceeded to Nacogdoches, where the troops of that place and those of Adaes joined him; and by means of his proclamation published there he was enabled to increase his forces to 700 brave and determined men, thoroughly skilled in the use of firearms. And having spent some time there in organizing his forces and distributing arms, ammunition, etc., he took up the line of march toward Bexar; but as soon as he crossed the Colorado river, he rapidly marched upon the presidio of la Bahía del Espíritu Santo, then garrisoned by a company of royal troops raised in Texas; because he knew the place was fortified and would afford an advantageous base for his succeeding operations, within ten leagues of the

port of Copano, through which he could receive assistance from New Orleans by water. And on his arrival at this presidio in the early part of November, 1812, he was joined by most of the garri-son, only a few having fled; and so he became master of the place without resistance. As he knew royal troops in considerable numbers had been massed in Bexar, he immediately added some betterments to the fortifications, built parietines across the ends of the streets, and gathered in all the subsistence possible to enable him to stand a siege.

On the seventh of the same month, 2000 royal troops, commanded by Manuel Salcedo and Simon Herrera, the first governor of Texas, and the second governor of Nuevo Leon, arrived and immediately began the siege. A considerable battle was fought on the fifteenth; and from that time for three months a close siege, with all of its privations and casualties, was maintained; and in the continuous sorties and assaults the besieged lost many of their most valuable men, among them Colonel Magee, while the loss of the royalists was much greater in men, horses, and pack mules. At last, on the 9th of February, 1813, Salcedo made an assault on the fort with increased energy and daring, in which some of his troops reached the street walls with their scaling ladders, causing the besieged to put up a white flag for a parley, which Salcedo and Herrera accepted, withdrawing their forces beyond the range of the guns of the fort—an act fraught with fatal consequences for them.

At the beginning of the parley, Salcedo demanded five of the principal officers of the besieged forces, to be placed by him at the mercy of the viceroy, which was sternly repelled by Gutierrez and his officers, with the declaration that the whole force, as well Mexicans as foreigners, should be allowed to retire with all belonging to them to wherever it might suit them; else they would defend themselves to the ultimate extremity. This being refused by Salcedo, and the negotiations thereby ended, the bells of the little church in the fort suddenly began to ring rapidly and violently to animate the besieged to renew their combat; and though Salcedo came again to the assault, he was completely repulsed on all sides, with heavy losses.

This glorious success on the part of the besieged sent terror into the hearts of the royalists, causing them to clamor for a retreat to

Bexar, which they finally began at night thirteen days thereafter. And the panic increased amid the darkness of the night, causing disorder in the ranks, from which Salcedo lost a third of his forces, some of them going over to the enemy and the balance deserting to their homes. Gutierrez sent a detachment in pursuit of the retreating royalists, which soon succeeded in capturing much of their equipment and many of their horses and pack mules, all of which the captors took into the fort, without any attempt on part of the retreating forces to rescue them. Animated by his success and the increase of forces, Gutierrez renewed the pursuit, and on March 29th, after the failure of Salcedo's attempt to ambush him, succeeded in capturing the whole retreating force, and afterward caused the two governors and twelve Spanish officers to be executed on the Salado creek.

But this digression has been extended far enough, without pursuing it to the fatal end of the campaign in Toledo's defeat by Arredondo on the Gallinas creek.

On the arrival of twelve of the survivors of this defeat at la Bahía del Espíritu Santo with the news of Arredondo's complete success instead of receiving protection, they were put to death by the men left there by Gutierrez, who declared in favor of the royalists, after enacting this least, but most detestable, massacre among the number that occurred in this presidio.

Arredondo soon sent Captain Luciano Garcia to reorganize the company formerly garrisoning the presidio and complete the number of men and horses required by the regulation of 1772.

In May, 1817, Colonel Perry and Major Gordon, who had gone with General Mina from Galveston island, then called Isle of Galves, to Soto la Marina, and there leaving him, had coasted back to Copano bay in their brig, which they left there in a small creek, marched thence with their company of fifty men upon, and laid siege to, la Bahía del Espíritu Santo; the garrison having shut themselves up in the presidio. But while in the most critical part of the assault, they were surprised in their rear by 200 soldiers from Bexar; and in the obstinate battle that ensued, they and all their men were massacred, not one surviving to tell the sad story.

From that time this place of massacres remained a plaza fuerte till the independence of Mexico, and a presidio under the republic

until it was declared to be a town with the name of Goliad, by act of the congress of Coahuila and Texas, passed February 4, 1829.¹

The last and most noted massacre at la Bahía del Espíritu Santo was that of Fannin's command in 1836, the brutalities and horrors of which have been portrayed in the works of modern writers of Texas history.

After the independence of Texas, the settlements at Goliad were made on the north side of the river and soon became the principal town; and now the old building of the mission of la Bahía del Espíritu Santo stands there on the south bank of the San Antonio river, where the passing traveler may see it without conjecturing the origin of its name or its connection with the history of Texas, coming down from 1519, when Pineda first described and named the bay into which the waters of the Guadalupe and San Antonio rivers flow.

¹ Decree No. 73, Laws and Decrees of Coahuila and Texas, p. 112.

EARLY EXPERIENCES IN TEXAS. II.

ROSA KLEBERG.

[The following is a continuation of the narrative published in *THE QUARTERLY* for April, 1898, and has been written on the same general plan.—*RUDOLPH KLEBERG, JR.*]

Upon returning home, everybody went peacefully to work once more. There was scarcely any crime; but times were very hard. Nearly all the cattle in the country had either been stolen by the Mexicans or were strayed and could not be found. A pig and one lame old ox constituted our entire live stock. Our house had been partly consumed by fire, and our crop of corn and cotton was, of course, totally destroyed. Our company went into partnership with Bosticks and planted a field. The work of splitting rails and building fences was very hard, since all of us had chills and fevers.

There was no ready money in the country; at any rate, we had none of it; and, what was worse, were in want of provisions. I sold some fine linen table cloth which I had brought from Germany for rice and flour. Six pounds of flour or rice could be obtained for one dollar. We could not afford to buy meal, we had no corn, and had to substitute hard curd for bread. It was with great difficulty that the farmers obtained seed-corn. My husband travelled two days and a night to buy seed-corn from a farmer living on the Colorado who had succeeded in saving his corn by putting it in an underground cistern. It was here that all our neighbors got their corn, paying \$5.00 per bushel. My husband bought a big work-horse for a labor of land.

The first store that did business after the war stood near the present site of Bellville. San Felipe was rebuilt soon afterwards.

In 1837, my husband was made associate commissioner of the Board of Land Commissioners, and in 1838 he was made president of that body by J. P. Borden, Superintendent of the Land Office. Upon his return from Houston he poured a number of bright silver dollars into my lap. This was the first money I had seen since the outbreak of the war. Later he was commissioned justice of the

peace by President Lamar, when he reunited in marriage great numbers of people who had been married under the Mexican government. By President Houston he was appointed chief justice of Austin county, and had his office at San Felipe. There was considerable legal business at this early time; and, while in the main things were pretty quiet, yet when litigation began in earnest, quarrels and shooting-scrapes were of frequent occurrence. One farmer, having been sued for marking his neighbor's pigs, killed his accuser. Everybody carried his rifle wherever he went, even if it was only to hunt his horses. At elections every one was supplied with fire-arms.

My husband used to tell many amusing anecdotes of the time when he was justice. The principal lawyers at this time in San Felipe were General Portes, R. M. Williamson (Three-Legged Willie), Rivers, and Col. Shepard, the father of Judge Seth Shepard. At the house where they boarded they were much annoyed by their landlady's partiality. It seemed to them that she reserved all the delicacies for her own table, and fed them on but ordinary fare. Williamson one day determined to put a stop to this. Keeping on his big coat, and spreading it out as far as possible, he placed himself in front of the ladies and entertained them in the pleasantest way, while Rivers and Portes exchanged the dishes.

A trifling fellow was in the habit of coming to San Felipe, getting on a spree for a week at a time, making himself a general nuisance, and leaving his family, who lived at some distance in the country, to shift as best they could. One day a "kangaroo" court was organized. General Portes, acting as sheriff, arrested the fellow, while Williamson performed the duties of prosecuting attorney. The latter made one of his characteristic orations while General Portes was engaged in whetting a big machete in the most menacing manner. About this time the fellow's horse was brought up, completely saddled; his counsel gave him a significant wink, and the defendant jumped on him and never returned to San Felipe.

The main road from Houston to Austin passed right in front of our house. There was constant travel, and immigrants passed almost daily. Every one who had a team and had spare time did some "teamstering," for this occupation brought the quickest ready money. Oxen were used for this purpose almost exclusively, a wagon sometimes having as many as five yokes. My husband also engaged in raising tobacco and making cigars, which he sold in

Houston at high prices; and people came from all around to his house to buy it. There was then no duty upon this article.

I can remember very well how the German colonists who settled New Braunfels and Fredericksburg passed our home. About one or two families came by each day. They had a hard time. Many fell sick on the road and died. Prince Solms-Braunfels came to our house one day and wanted me to make coffee for him. He was attended by a number of persons on horseback, and was dressed like a German officer. He impressed me as a conceited fool. He was unwilling to eat at the same table with other people—a manner of conduct which, I fancy, did not serve to raise him in the estimation of the American farmers. Messrs. Von Gleichen and Von Meusebach, who were connected with the colony, and stopped in our house, were very pleasant gentlemen, indeed. They asked me whether it were not desirable that cultivated German families should come. I replied that they would have a hard time.

Most people camped. Only single men, who came to prospect—there were a great many of them, however—stayed at the taverns and boarding houses.

Of German farmers in our neighborhood there were very few. There was the settlement of Oldenburgers,¹ who had come with us, on Cummins Creek; Mr. Ernst's and Mr. Fortrandt's farms at Industry; and Mr. Charles Amsler, a Swiss, who had come with our relatives six months before us, lived within a few miles. Messrs. Lindheimer, Hollien, Lebermann, and Nuthen were with Col. Morgan's company in Galveston, having come from New Orleans. Later Lindheimer came to Cat Spring and lived with us for quite a while. Being a naturalist, he made a specialty of botany, in which science he did the pioneer work in Texas. He sent his specimens to Berlin, and many of the new plants he found received his name. He lived in a miserable little hut, which was crammed full of specimens

¹ The Oldenburgers on Cummins Creek who had come with the Roeder family according to the memoranda of Robt. Kleberg, Sr., were:

R. D. Stolje and wife, (probably Stoehlke)

— Reinerman and wife

— Bartels

— Damke

William Vrels (at the storming of San Antonio)

John Hennike

George Herder (in the battle of San Jacinto)

of animals and plants. On his little Mexican cart he would sally forth on excursions into the wilds of the Brazos bottom, returning with a wealth of new and strange forms of plants and animals.² He was a fine gentleman and a splendid scholar. In his later years he published the *New Braunfelser Zeitung*.

I also remember that Pastor Ehrenberg, who escaped from the massacre at Goliad and fought with great valor in the battle of San Jacinto, came to our house and baptized my children.

Of course, I came into contact with the outside world very little. I was busy with my household, and had a great deal of work on my hands; but I attended a few social gatherings. I have already mentioned the little dance in our house in Harrisburg, and I ought to have mentioned in that connection the great ball given by the people of Harrisburg on the occasion of the capture of the old fort at Anahuac in 1835. In the early forties, I remember attending a big dance and barbecue at San Felipe on the anniversary of the battle of San Jacinto. People came from a radius of forty miles. In the open air were two big tables, one covered with barbecued meat and the other laden with cake. The dance was held in the big hall of the court house, which accommodated about one hundred couples. Reels and squares were the favorite dances, and I was much impressed by the loud prompting, which is not customary in Germany.

Col. Pettus and Capt. John York, who had moved to De Witt county two years before, persuaded us to go west, where we settled in 1847. The country was very thinly settled, and was not entirely free from Indians. Capt. York and several others were killed in a fight on the Escondida, in which my husband participated. Our neighbors were Pettus, York, Scott, Bell, and my brother, Albrecht von Roeder. They were a fine lot of people—brave, reliable, and true. This community built the first school house on the twelve-mile Coletto, where Rigley, an Englishman, was the first teacher. There was no postal system to speak of, and letters were carried by private parties as opportunity afforded.

Our home was the meeting place of many young, educated Germans, who, driven out by the revolutions of 1848, hoped to find in Texas the land of freedom. Germans of all classes began to come a little later, and thus the stream continued until the Civil war.

² One has only to turn the pages of Coulter's *Botany of Western Texas* to satisfy one's mind as to the magnitude of his work.—R. K., JR.

NOTES AND FRAGMENTS.

EARLY TEXAS NOMENCLATURE.—In casting about for fresh material from which to construct a chapter for THE QUARTERLY, it occurred to me that a review of the local names attaching to some of the old colonists, together with their significance, might prove interesting.

Though the number of men was so small, there were many whose surnames were the same, and, as they were all more or less known throughout the colonies, various prefixes were adopted to individualize them. These prefixes were the results of accident, incident, or the occupation of the party to whom they applied.

There was, for instance, "Popcorn" Robinson, who was the first settler on the site later occupied by Brazoria. The early arrivals mostly landed at the mouth of the Brazos, and, leaving their families and effects there, struck out into the interior in search of locations. Such a party, starting out up the river, struck camp on the site of the future town. Being pleased with the place, one of the party declared his intention of locating it, and as a preliminary step took from his wallet a handful of popcorn, which he proceeded to plant. The spot, however, proved to be on Austin's reserved land, but that didn't interfere with the claims of the corn. It maintained its ground, at least to the extent of giving name to the place, which became known as the "Popcorn Patch" until it was laid out for a town and rechristened Brazoria. William Robinson purchasing and settling on the "Popcorn patch," the name was extended to him. His family consisted of a wife and a daughter, who married one George Mosely. They probably have descendants in Texas.

The Brown family had the largest representation, with the Williamses a close second. Everybody has heard of "Waco" Brown, but it may not be so well known that his distinctive appellation was the result of an enforced sojourn among the Waco Indians. Then there was "Mustang" Brown, whose occupation was the catching of wild horses; with him in the business was associated one Hopkins, who also shared his title. "Sheep" Brown, living on the Brazos,

above San Felipe, owed his distinguishing prefix to a large flock of sheep, the first in the colonies. "Dog" Brown gained his unenviable notoriety by appropriating another fellow's dog. "Cabris" Brown having in like manner become possessed of a cabristo, or, as the Americans pronounced it, "cabris"—a hair rope,—figuratively speaking expiated his sin at the end of a rope. Then there were Billy Brown and "Buckskin" Billy, and "Little Buckskin" Billy Brown.

Robert Williams, who lived out on the San Bernard, being a man of property, with servants and "store" clothes, was distinguished from the various other members of the Williams tribe by the sobriquet of "Gentleman Bob." "Varmint" Williams, a member of Dewitt's colony, was a collector of wild animals for menageries. His son Napoleon was the only one of the family that I knew. "Pot" Williams, the first constable in San Felipe, becoming engaged in a heated controversy with one Stafford while the two were in camp together, grabbed a small cast-iron pot and smashed it over Stafford's head; thereby earning for himself this euphonious appellation. "Waco" Williams was the first white settler in the Waco country.

Though the "Smith" family was well represented, comparatively few of them seemed to have attained that degree of prominence entitling them to a rechristening. Of these, Erasmus, or "Deaf," Smith is the most conspicuous, not even excepting the governor. Deaf Smith, however, was not, as I have seen it stated, stone deaf, though his hearing was quite defective. The suggestive title of "Picayune" Smith attached to the proprietor of a store in Victoria. Charles Smith, a denizen of old San Felipe, was known everywhere as "Beaver-trap," he having formerly been engaged in trapping.

There were two William Coopers, one of whom had a large stock ranch on the east side of the Brazos below San Felipe de Austin, and was consequently designated "Cow" Cooper. The other, from having had an encounter with a sawmill, from which he came off mangled out of shape, was called "Sawmill" Cooper. He, in company with one Cheeves, put up the first frame building in San Felipe, using it for a saloon.

Robert Mitchell, who gave name to "Mitchell's Bend" on the Colorado, below Austin, was the first man in the colonies to engage in hog raising as a business, which circumstance gave him the name

"Hog" Mitchell, in contradistinction to Asa and Eli Mitchell, who operated the salt works at the mouth of the Brazos.

Judge R. M. Williamson, from an unfortunate affliction which necessitated the addition of a wooden leg to supplement the natural member, which was drawn up at a right angle at the knee, was everywhere known as "Three-legged Willie."

The most amusing story of a name is one pertaining to one "Hop" Johnson, a citizen of the Redlands. It was told of him, and he didn't deny it, that, being in old "No. 9," a notorious gambling house in New Orleans, where the deluded votaries were being fleeced without mercy, he seized the opportunity when the game was at its height, the attention of the crowd being centered thereon, to sweep a pile of money into his hat and gain the door before the denizens of the place grasped the situation. Making for the levee, Johnson, by leaping from pile to pile of cotton bales, finally succeeded in eluding his pursuers and escaped to Texas with his winnings. Said he, in justification of his course, "It was all a thieving game anyway, and my method differed from theirs only in being more direct." His feats among the cotton bales won for him the name by which he was generally known, although he signed his name with three initials.

Later there was a man in Austin called "Ramrod" Johnson on account of the stiff dignity with which he carried himself. His real name I never knew, but he was for a time editor of the *Texas Sentinel*, later changed to the *Western Advocate*.

Capt. Matthew Caldwell, who settled in Dewitt's colony and took an active part in the revolution and also in the Indian wars, was familiarly known as "Old Paint," his otherwise healthy complexion being interspersed with patches of deathly white.

There were also a goodly number of Wallaces, and, singularly enough, they were all named William. I knew several of them, but somehow never met the celebrated "Big-foot" Wallace, the origin of whose nickname seems to be in doubt. "One-eyed" Wallace, who lost an eye in an Indian fight, was for a time clerk of the court of Bastrop county.

"Peg-leg" Ward lost a leg in the storming of the Alamo in the fall of '35, for which he was remembered in a position in the land office. There was about Austin in the early days also a "Quashy" Ward.

NOAH SMITHWICK.

THE MURDER OF THE TAYLORS BY THE INDIANS.—In his chapter on the Indian Tribes of Texas in Scarff's Comprehensive History, Capt. M. M. Kenney has snatched from oblivion a great deal of our Indian history; especially much concerning our troubles with Indians. But I have detected one error which he has evidently drawn from previous writers; mainly, I think, from Rev. Z. N. Morrell. It is in the particulars of the murder of Mr. Taylor and his wife in Grimes county, as given on page 748.

I read the first edition of Rev. Z. N. Morrell's "Fruits and Flowers" soon after its publication, but have not a copy of it now at hand. If I remember correctly, he tells the story of these murders nearly as Captain Kenney tells it. Morrell gives the date as 1839, and does not apply a Christian name to Taylor, but mentions him as "Mr. Taylor." His account, I know, is incorrect.

Taylor's Christian name was not John, as Captain Kenney has it; his wife was not killed on a visit to the place of his murder; and they were not killed in 1836, the date given by Kenney, nor in 1839, that given by Morrell.

Here are the facts: Levi Taylor was killed by Indians March 8, 1837, while in a creek bottom hunting a cow. Another man, Alex Whitaker, was with him, but escaped. Mrs. Taylor, after her husband's death, moved with her children to the residence of Joshua Hadley, and dwelt with his family. She had three children: Franklin, John, and a little girl, aged respectively six, four, and two years. On the night of June 2, 1837, a band of Indians attacked Hadley's house, but were repelled. After they had retired Mrs. Taylor was fearful that the attack might be renewed, and attempted to escape with her children to the residence of Col. Joseph L. Bennet, half a mile distant. Hadley's family tried to restrain her, but could not. On the way she encountered the Indians in ambush, who killed her and the little girl. The two boys ran back to Hadley's. The Indians fired after them, wounding Franklin severely in the hand. John alone escaped unhurt.

Later Lévi Taylor's brother, John Taylor, came and took the two little boys to his father, who lived in Tennessee.

I knew Levi Taylor well before his untimely death. I was one of thirteen men who buried him, and I was also one of nineteen who pursued the murderers of Mrs. Taylor and the babe, but the savages escaped. I saw the bodies of Taylor's wife and child after they had

been murdered, and I conversed with the two little boys after the death of their parents and sister. Therefore I am familiar with the facts in the case. They are stated in order to correct the error into which some earlier writer has led Captain Kenney, and for which he cannot be to blame. It is from a sense of duty that I make this correction; and under similar circumstances I should thank any responsible person so to correct me.

W. P. ZUBER.

QUESTIONS AND ANSWERS.

Where are to be found the original documents on the organization of the municipalities of Texas?
C. W. RAINES.

The work about which Edmond J. P. Schmitt inquires in *THE QUARTERLY* for April, 1898, is undoubtedly the "Memorias para la Historia de Texas" of Padre Morfi. It is mentioned by H. H. Bancroft,¹ who cites a copy made in 1792 "by P. Manuel de Vega from the archives of the convent in Mexico." Bancroft cites the collection of original materials used by Morfi in writing the "Memorias, etc.," as "Texas, Doc. Hist.," the full title being "Documentos para la Historia Eclesiástica y Civil de la Provincia de Texas." It seems to be this collection, not the Memorias as Raines appears to suppose,² which forms vol. xxvii and xxviii of the *Archivo General de Mexico*.³ The Memorias are still unpublished.

GEORGE P. GARRISON.

All persons of the name of Jennings are requested to communicate with the undersigned, who is compiling a history of the several families of this name.

W. H. JENNINGS,
172 N. Washington Ave.,
Columbus, Ohio.

In reply to queries in the July number by Elizabeth H. West, I can answer:

¹ North Mexican States and Texas, I 631-2 and note.

² Bibliography of Texas, p. 152.

³ Bancroft: North Mexican States and Texas, I xlv.

No. 3. The Mississippi River was called the "Colbert" in honor of the Minister of France, M. Colbert, who died in 1683. In the *Relation de Henri de Tonty*, published by M. Pierre Margry, in Volume I of his "*Découvertes et Établissements des Français*," we find it stated by Tonty that it was La Salle himself who so named the river. "Cela fut cause que nous n' arrivâmes que le 6 Février au fleuve de Mississippi, qui fut nommé Colbert par M. de La Salle."¹

No. 4. La Salle states first of all that his party was assured by the nations living along the great river that they were the first Europeans who have "*descended or ascended the said River Colbert*." Moreover, French, who is very often wrong in his conjectures, can hardly be justified in saying that "La Salle seems to have been the first to identify the great river of Marquette and Joliet with the great river of De Soto." On the contrary, in the fragment in his own handwriting, published by Margry in the second volume of his documentary collection, entitled *Revières et Peuplades des Pays Découverts*, disproves this identity by adducing a number of arguments.²

No. 5. The Seignelay, or Illinois, is the present Illinois River. It was by way of this river that Père Marquette made his return trip after the discovery of the Mississippi.³

EDMOND J. P. SCHMITT.

¹ Loc. cit., p. 595.

² See pp. 196-200, loc. cit., Vol. II.

³ See Marquette, Spark's American Biography, Vol. X, especially p. 298.

AFFAIRS OF THE ASSOCIATION.

This number of *THE QUARTERLY* has been somewhat delayed, partly to give the printers time to receive some new matrices, recently ordered, and partly by reason of special difficulties that have been encountered in the editorial work. The effort has been made to get out each number early in the month in which it is due, but unforeseen hindrances have arisen in nearly every instance. Energy and experience will doubtless secure the desired punctuality by and by. The management of *THE QUARTERLY* has a certain stock of the first of these necessary qualities, and is rapidly securing more of the second. Meanwhile, let the members be patient.

Some complaints are made of failure to receive *THE QUARTERLY*. This can hardly be due to any fault in the mailing arrangements at the office; but whenever it happens one of the secretaries should be notified, and the matter shall then have such rectification as may be possible.

Experience with *THE QUARTERLY* has thus far shown that it is not likely to want for material. More is now offered than can possibly be published. And this suggests one thing that it would be well for those who would be contributors to remember. If one writes about historical facts of which he has no immediate knowledge, he should, in order to satisfy those readers whose commendation is most desirable, always indicate the sources of his information.

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CONTENTS OF VOLUME I.

NUMBER 1; JULY, 1897.

PRESIDENT'S ADDRESS	O. M. Roberts.....	3
HISTORY OF TEXAS GEOGRAPHY.....	Z. T. Fulmore.....	9
TRIBAL SOCIETY AMONG TEXAS INDIANS	M. M. Kenney.....	26
EDITORS AND NEWSPAPERS OF FAYETTE COUNTY	Julia Lee Sinks.....	34
EXPULSION OF THE CHEROKEES FROM EAST TEXAS	John H. Reagan.....	38
JOHN CRITTENDEN DUVAL	William Corner.....	47
THOMPSON'S CLANDESTINE PASSAGE AROUND NACOGDOCHES.....	W. P. Zuber.....	68
HISTORICAL SKETCH OF THE ASSOCIATION; CONSTITUTION.....		71
NOTES.....		75

NUMBER 2; OCTOBER, 1897.

ANNEXATION OF TEXAS.....	Sam Houston.....	79
DEFUNCT COUNTIES OF TEXAS.....	R. L. Batts.....	87
REMINISCENCES OF AUSTIN AND OLD WASHINGTON	J. K. Holland.....	92
ENDURING LAWS OF THE REPUBLIC OF TEXAS	C. W. Raines.....	96
THE OLD THREE HUNDRED	Lester G. Bugbee.....	108
FIGHT ON THE FRIO, JULY 4, 1865.....	John S. Ford.....	118
VEN. MARIA JESUS DE AGREDA: A CORRECTION.....	Edmond J. P. Schmitt....	121
NOTES AND FRAGMENTS.....		125
QUESTIONS AND ANSWERS.....		129
THE AFFAIRS OF THE ASSOCIATION.....		129

NUMBER 3; JANUARY, 1898.

PREHISTORIC RACES IN TEXAS.....	O. M. Roberts.....	145
THOUGHTS ON ECONOMIC HISTORY.....	C. E. Dutton.....	151
ALVAR NUÑEZ CABEZA DE VACA.....	{ Brownie Ponton..... } { Bates H. McFarland... }	166
J. PINCKNEY HENDERSON	F. B. Sexton.....	187
WHO WAS JUCHEREAU DE SAINT-DENIS?.....	Edmond J. P. Schmitt....	204
SOME OBSCURE POINTS IN THE MISSION PERIOD	Walter Flavius McCaleb ..	216
NOTES AND FRAGMENTS.....		226
QUESTIONS AND ANSWERS.....		228
THE AFFAIRS OF THE ASSOCIATION.....		229

NUMBER 4; APRIL, 1898.

ESTABLISHMENT OF THE UNIVERSITY OF TEXAS.....	O. M. Roberts.....	233
THE REAL SAINT-DENIS	Lester G. Bugbee.....	266
THE OLD MEXICAN FORT AT VELASCO.....	Adèle B. Looscan.....	282
RECOLLECTIONS OF EARLY SCHOOLS.....	M. M. Kenney.....	285
SOME OF MY EARLY EXPERIENCES IN TEXAS.....	Rosa Kleberg.....	297
NOTES AND FRAGMENTS.....		303
QUESTIONS AND ANSWERS.....		307
AFFAIRS OF THE ASSOCIATION.....		312

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JANUARY, 1899.

No. 3.

The Publication Committee disclaims responsibility for views expressed by contributors to the Quarterly.

THE "PRISON JOURNAL" OF STEPHEN F. AUSTIN.

[This hitherto unpublished private diary appears in *THE QUARTERLY* by the kind permission of Col. Guy M. Bryan, who, as all old Texans know, is a nephew of Stephen F. Austin. It follows closely a copy in possession of Colonel Bryan made by his brother, Moses Austin Bryan, from the original, which was written by Austin in pencil in a small blank book that he managed to conceal when he was searched at the time of his incarceration. The matter at the end refers to a project which Austin succeeded in accomplishing while he was in Mexico, and which was in fact the establishment of the first public mail route between the Mexican Republic and the United States. This matter is written without a date on the back of the last page of the copy.]

Col. Bryan says that Austin's criticism of the Catholic church should be taken as referring not to the church in general, but to the form of Catholicism then prevailing in Mexico.

The italicized title given below is written in ink on the cover of the MS., except the explanatory words, "private" and "before confinement and," which are added by Col. Bryan. Under this title on the MS. are penciled the words: "Three months in the ex-Inquisition & not allowed to speak to any one, one year in the Prison of the Acordada, and the balance of the time with the City of Mexico for his limits, under bond, and was finally released without trial under a general amnesty law passed by the Congress." This title and the penciled addition would appear to be original with Moses Austin Bryan.—EDITOR QUARTERLY.]

Just "Merricplicity" 217

German Planners in Bryan's box as of 227
Abbe Thomson 237

Private Diary of Genl. S. F. Austin before confinement and while confined in the Ex-inquisition city of Mexico, 1833 & 1834 & 1835.

I left Mexico on the 10th Decr., 1833 in a coach in company with Don Luis de la Rosa, deputy in the general congress, Don Octavian de la Rosa, & Don Migual Orteaga.

The 1st day at Tampantla.....	5 Leagues.
Decr. 11th at Huihuitoca ..	12 “
Decr. 12 “ Tula ..	12 “
Decr. 13 “ Arroyo Sarco ..	13 “
Decr. 14 “ San Juan del Rio ...	14 “

San Juan del Rio. Very long street; Don Luis and myself went to take a walk, every thing very dull—a church built in 1683 with a new front of the Corinthian order, at the expense, as the padre told us, of a famous robber & assassin, who had been the terror of the country—he was taken at last—he employed the money which he had robbed in building the front of the church—he received civil pardon & spiritual absolution; & went to heaven, so said the padre—& *he knew*, because the tradition was not old, about 50 years.

Dec. 15, at Queretaro—(14 Leagues) A city of convents & churches, with some very good private houses.—The convent of Santa Clara (for nuns) is the largest, it is said, in the Republic, & the richest. The inside of the church is excessively loaded with costly ornaments, all of the most ancient gothic stile, worthy emblem of such a monster, of the past century—One is astonished at seeing these monuments of the barbarity & ignorance of the 10th and 12th centuries, preserved with so much care in the 19th century, & in a Republic. Marry women with God. How ridiculous.—To break the commandment of God himself, & to go contrary to his intent in creating women, in order to please God in consequence.

16th Dec. We remained at Queretaro.—We visited the convents—these are many and very large. In that of ¹ Cruz there is a large orchard well watered—It has a large fountain constructed by a marquis who has perpetuated his fame & piety

¹ Here occurs a blank, which was doubtless left to be filled with the exact name afterwards.

by a statue of himself of his own size, which stands in the centre of the fountain on a base of stone—He is habited in the old fashion. There are extensive baths convenient to the fountain, constructed by the same marquis.—How much sweat & tears from the Indian slaves, must the money have cost, which the marquis employed in the construction of this fountain and baths? But he received absolution from the monks & went to heaven.

In the orchard there are many very pretty cypress trees. I collected seeds from them to carry to Texas.—They shewed me some of these trees planted by the hands of the Rev. father Morfit, who had been a monk in this convent, & a missionary at Nacogdoches in Texas. This monk is very famous, for he has been a second Moses. At Nacogdoches all the springs went dry, & he went out with images of the saints & necessary apparatus to perform miracles. He struck a blow with a rod of iron on a rock, which stands on the bank of the creek La Nana, in Nacogdoches, & immediately a stream of water gushed out, sufficient to supply the inhabitants with water to drink. This miracle was canonized in Rome, and a print or engraving of the fact was made in order to perpetuate it.—This same padre, when he left Nacogdoches for Bexar, lost a baggage mule, which a Tiger killed; and in the morning as soon as the padre knew it, he made the Tiger come and kneel at his feet, and then he was harnessed & loaded with the baggage of the dead mule, which he carried to Bexar, & then having received a pardon for having killed the mule, was sent back to the desert. All this is true, because several old women told it to me in Nacogdoches & Bexar, and we ought not to suppose that Rome would order an engraving to be made of a miracle of the water, only to deceive credulous people.

In Queretaro the sweet potatoes are very rich, the best I have ever tasted. Sweetmeats are very good & exceedingly cheap.—In the convent of Santa Clara are sold large quantities of sweet-meats of infinite kinds & qualities—Ah woman, what inadequate shadows are these sweet-meats made by that hands, compared to the tranquil pleasure which ye ought to dispense, by occupying that rank in society & in the world, which the God of nature gave ye, & which the barbarous & avaricious cunning of Rome has deprived ye.

This city is very well supplied with water of good quality, brought by an aqueduct from the mountain in front of the city. It passes a valley on arches, which are very well constructed, & are about

60 or 70 feet high. The aqueduct is about half a league long. It is a useful work, worthy of Paris or any city in the world.

In the public square there is a large fountain of hewn stone, very convenient & beautiful—The water rises to the second story in the houses situated in the lowest part of the town.—There is a story respecting this work, which has been affirmed to me as correct. That two rich men in a moment of conviviality, speaking of the practicability of bringing water from the mountain in front, one said that it was practicable, & the other affirmed that it was impossible, & offered to build a fountain in the public square of solid gold, if the other would bring the water. Upon this the 1st admitted the challenge, & they both mutually obligated themselves to the execution, by an act legally passed. He that offered to bring the water, completed the work & made the aqueduct & arches above mentioned. But he spent his fortune & ruined himself.—The other then refused to make the fountain of gold, a law suit was commenced, & in fine he was compelled to make it of hewn stone, and to conduct the water through all the streets of the city, in which he also expended his fortune & ruined himself. In this case wine rendered a very great service to the human race, because it caused those two rich men to employ their fortunes for the benefit of the people, instead of giving them (as very probably they would have done) to convents.

The streets of Queretaro are irregular, of various width & crooked or serpentine—it is situated on the side of a hill.—The potatoes of this place are famed for their sweetness, when roasted they appear to be sweetmeats.—If it were practicable, as is said, to open a Road for carriages from this city to the head of navigation Panuco river, it would increase very fast, & in a little time would be opulent, modernized & free from prejudice. Because it would be the depot for all the Bajio, & a great commerce would be carried on in domestic & foreign produce.—It would be in fine, the *centre* of commerce of a fertile & extensive Territory—After that, various manufactures could be established here to great advantage, by making use of the convents for that purpose, & by giving employment to many vicious inhabitants, who now appear to live, God knows how, as they have no ostensible occupation.

The Tavern at which we staid in front of the convent of Santa Clara, is a very large & well built house of two stories.—It is very

convenient, having a fountain of water, warm and cold baths, very good rooms, but without a single bedstead or cot. All the furniture of one of the best rooms, consisted of two or three common chairs & a very ill made table.—It is said that the stage company of Mexico, is endeavoring to purchase the house for a tavern, & will furnish it after civilized fashion.—

(17th Decr.) 14 Leagues to Celaya, a Town of about 4000 inhabitants. The public square is surrounded by arches, as is the case in most of the towns of the Bajio. It contains some very good buildings of hewn stone. The church of the convent of the Carmelite monks is exceedingly magnificent, of modern construction. The interior is adorned with Ionic columns, & not so loaded with ornaments and statues as the gothic churches, but much more handsome & agreeable to the eye. The architect was an Indian, a native of the place, who died in August of the cholera. He studied architecture by himself, and made his own models of wood. He had great natural talent, & his death is a loss to his country.

How many other Indians would there be of as much or even more talent, if their education were cultivated? The convent is large, very well built, 160 years old, rich in estates & rents, it has two monks!

There is also a very large convent of San Francisco. We went in & walked all over the building, without seeing a single soul. It contains two or three friars. There are accommodations for more than 200.

There is also a large convent of San Augustine well constructed. The Indian architect who built the church in the convent of the Carmen, was erecting a new steeple for the church of this convent, of a new or mixed architecture, different from any that I have seen before, after his own ideas. He had it half finished when he died.

Besides these convents, there is several chapels & a parochial church. If all this money had been employed in opening a carriage Road from Queretaro to the river Panuco, how different would have been the situation of the Bajio with respect to its commerce & improvements.—What a pity that Rome did not set down as a dogma, that the man who should leave his property to open roads, canals, to establish schools, foment agriculture & the arts, should go straight to heaven as soon as dead.—The Mahometans were conquerors &

desolators by a paragraph of the Koran. Rome could have made the Catholics the civilizers and patrons of the arts with the same facility.—All that was wanting, was an edict of the Council of Trent, or of any other Council, or a bull of the Pope.

At dusk, Don Migual suddenly entered the room, & told us that the Robbers were scheming with the coachman to rob us on the following day. All the company became alarmed, and Don Luis determined to go to the political chief, and ask him for an escort. I was opposed to it. I did not believe the story about the robbers. They replied that I was not acquainted with the country or the people, that it was full of robbers. I said that it appeared impossible that there should be so many robbers, in a country that abounded so much in churches. Ah my friend said D—— these churches have only served to demoralize the people!!!! And for this parents have broken the ties of nature, & trampled on the most amiable & delicate sentiments of humanity & civilization, dis-inheriting their children, in order to construct convents & churches, that only served to demoralize and corrupt the people. And with all this, there are Mexicans who desire to perpetuate this monster, *the influence and power of the clergy*.—Even the late administration of Bustamente was desirous of governing the nation by the mitre & monastic superstition, credulity, & ignorance, instead of governing by intelligence & common sense.

Don Luis went to see the political chief, & agreed with him for an escort of one sergeant & five militia, at² rials a day for each man, & on the following day we set out in great state; coach, & six soldiers on horseback, as an escort with their lances & red flags.

(18th Decr. 1833) 12 Leagues to Salamanca.—We arrived early & went to visit the convent of the Augustinos, a very large building of very solid construction of stone & mortar. It occupies a whole block on the public square, & has behind it the river Salamanca at 200 paces distant. The building including the church, has 156 varas in length, & 135 in width, & has two court yards. The first has portals on the four sides, sustained by very solid pillars of stone well cut, joined together by arches, under each one of which there is a large painting or picture representing some miracle or passage in the life of San Augustine. The edifice is two stories high. The

² Number obliterated. See p. 191!

other court yard is very large & gives light to the cells of the friars that surround it. This enormous building is abandoned, for there are only two monks who occupy a room in the large court-yard in the first story—in the second there is not a single soul.—The whole republic is full of these edifices, & many of the best plantation lands, & an innumerable quantity of houses, & even palaces in the cities, belong to these monuments of ignorance of the past generation, & of the cunning & avarice of Rome.—It appears incredible that it is possible for mankind to have been so deceived to such a pitch, as to make them believe that they could purge themselves of the sins of this life, by giving their wealth & property to maintain a set of monks in idleness, & every kind of immorality, & even of crime, which was committed under the cloak of religion. Parents have left their children in want and misery, in order to give their riches to friars to fatten on in their wickedness, while the sons being thus robbed of their inheritance, have given themselves up to vice, & probably to *robbery*, in order to live, receiving absolution from the same monks, that enjoyed their inheritance.—Rome! Rome! until the Mexican people shake off thy superstitions & wicked sects, they can neither be a republican, nor a moral people.

(19th Dec.) To Silao 14 Leagues.

20“ “ “ Leon 15 “

The Bajio. A great valley which extends from Queretaro to Lagos, about 100 Leagues long & from 10 to 12 wide. It contains the towns of Celaya, Salamanca, Silao, Leon, Lagos, & several villages. The city of Guanajuato is on the mountain 5 Leagues from Silao.—This valley is excessively fertile, and sufficiently populated. It has a dull aspect, because its natural beauty & fertility is not attested by industry & art. It abounds in churches & convents, & in times gone by, in friars, the most of whom have disappeared in the political revolutions, leaving the people heirs to their idle superstitions & corrupt habits.—There are a great many robbers.—

In the Bajio, the labours of the fields & factories are done principally by the Indians. The character & natural disposition of this people appear to be very good. They are industrious, humble, patient, & docile. They speak in their native, or original language, & still preserve some of their ancient customs. They also speak in

Spanish, (badly however) & have acquired some modern habits. But not of the best kind. They are very fanatical & superstitious. As regards this subject, perhaps the only change that they have undergone, is from the adoration of coarse & ugly images of stone, to that of pretty, well made images of wood, richly clad.—It is difficult to say whether they belong to the past or present times, they may be called *shades* of antiquity, with some modern *spots*. They are naturally well disposed, & talented, & if their education were cultivated, they would undoubtedly be equal to the whites, more docile & very good citizens.—The great mass of the Mexican Republic is composed of this class.—They are not at this time capable of governing themselves, & consequently badly prepared to become republicans.—In fine, most of their customs and ideas are repugnant to the principles of the system adopted by the nation. This is a very great evil which has to be remedied before the republic may be said to be solidly established.—because this form of governments has to be³ & sustained by the general good will & opinion. But if there be no *will or opinion* permanent & established, how is the evil to be cured? By *education & example*, the first by well regulated schools, & the 2nd by means of foreign population engrafted, thus combining everything which is most essential to instruct; (viz.) Theory & example.—The substantial and palpable practice of virtues, of industry, & of habits, civilized, useful & republican.—Schools might be established, by appropriating the property of the clergy & example might be obtained by the emigration of foreigners, increasing at the same time the population & wealth & wealth of the Republic. Therefore the two cardinal points on which the Government should fix their attention, are, *education & emigration*.—Already stages & taverns have been established between Vera Cruz & Mexico by foreigners.—This has been a kind of school, inasmuch as the Mexicans have learned by *example* the manner & the advantages.—The result is, that they are going to run stages by Mexicans, from Mexico to Zacatecas & San Luis, & so progressing throughout the whole country where the roads are passable, establishing also Taverns at convenient points.—This is a very great step towards civilizing the country, & uniting the states with each other, because when transportation is easy there will be

³ Word obliterated.

frequent communication, & intercourse of interests & friendship between remote points, which will be so many other links to cement the Union.—There is a very great obstacle to any system of education, or of emigration, which has to be removed before much progress can be made by this means—which is *religious intolerance*.—This restricts the sphere of education, & tends to perpetuate superstitious customs & ideas on one side, & prevents foreign emigration on the other, and it has to be, during the existence of an insurmountable counterpoise which debilitates the march of the nation in improvements, if it does not entirely⁴ it.

In this town (Leon) there are factories of saddlery & tanneries, there are also some of cotton cloth of a coarse kind. Whence comes the cotton? Will it be credited that it comes from Coahuila, & even from Texas, by way of San Luis Potosi & Tampico? Nevertheless thus it is.—There is no part of the republic, nor can there be of the world, more adapted to the cultivation of cotton than the Bajio.—The planters could raise it for \$3 00 \$00 per cwt, free from seed, & of a superior quality. But in place of this, it is purchased in distant countries from \$7 to \$10 a hundred. Texas which ten years since was a wilderness, inhabited only by Savages, now supplies the Bajio with cotton, (about 400 Leagues distant,) a country naturally more fertile, and a better climate for cotton than Texas.—Where it has been possible to expend innumerable millions of dollars in the fabrication of wonderful edifices for the clergy, but not a dollar for public education, or for the fomentation of agriculture, arts & manufactures.—There is a school or college recently established here which promises well. There is a castle or tower constructed by Augustin de Iturbide in the year 1815, at that time commander General under the government of the King.—The object of the castle was to defend the town from the insurgents. It appears to me that it is entirely useless as a defense for the town from attacks from outside. But it is sufficient to hold the town in awe & subjection.

There are many rumours of robbers. So that Don Luis is determined to have as far as Lagos the same escort that we brought from Celaya. This escort is composed of militia who are paid 13 rials for each man daily. What a sad & pitiable condition of the most

⁴ Word indecipherable.

fertile, lovely & populated part of the republic, where travellers may not Journey with safety without an escort of armed men.—The people of Leon appear very bigoted, no cheerfulness, or sociability, every house appears to be a convent. Their extreme devotion caused me to remark to Don Luis, is it possible that robbers can exist in the midst of so much piety? Ah! my friend, he replied, *this piety* is one of the cloaks tainted with corruption, that we have inherited from the Spaniards, this manifest superstition is a cloak that we have to shake off before we can make any rapid progress in improvement.

(21st Decr. 1833) 'To Lagos 12 Leagues. This town is situated upon a rivulet, near which are some lakes from which it derives its name. It is near the foot of the mountain, & here terminates the Bajio.—The lands in the vicinity are very fertile. The church is the highest I have seen, of arabic gothic architecture. It contains a convent of Capuchin nuns, an order more rigid than any other.—Don Luis related to me a sad story of a pretty girl that took the veil when very young.—It appears to me that man must cease to be *man*, to approve of these prisons, where the most precious part of the works of the Almighty are incarcerated.—All the Bajio has just suffered two great calamities, civil war & the cholera morbus. In some places one half of the population are said to have died.—The road from Queretaro is excellent, very level & but few stones except on a hill this side of Leon.

The fort called *Sombrero* so renowned in the revolutionary war, is situated between Leon & Lagos, on a little round hill on the left of the road.—The fort of San Gregorio may also be seen from Leon on the left of the road, more distant than the other.

The great obstacle to the improvement of the interior of the republic, is the want of roads to transport produce to the coast for exportation. But it appears to me that this obstacle may in a great measure, be removed, at least so far as regards the Bajio.—I have already said that the country is level as far as Queretaro, and I understand that from Queretaro it is not difficult to open a carriage road to the last navigable point of the river Panuco, which disembogues at Tampico. If this be true, it is clear that the obstacle is not insurmountable; with capitalists & enterprising men this obstacle would in a very little time, be removed.—And then the Bajio, instead of receiving cotton from Texas, would export large

quantities to Europe, as also sugar, & would supply the coast with wheat, & other grain. A country without any other exports than gold & silver, can never be anything else than dependent on other nations, without advancing in agriculture any more than what may be necessary for home consumption. Such a country in fine is nothing but a nation of miners, getting out gold to enrich foreign nations.—At Lagos, Don Luis met his friends who had brought a coach for him from Aguas Calientes; & on the 22nd I took leave of this good friend & virtuous, intelligent patriot.—He is one of the most philanthropical men, & the greatest enthusiast for the welfare & felicity of his country that I have known, & the most disinterested and industrious. 22nd Decr. 15 Leagues to Matanzas.—Alone with my servant, I took the road to San Luis Potosi, & expected to overtake there Genl. Pedro Lemus, commander general of the internal States of the East, who was going to Monterey. It was my intention to go by Cienaga de Matapara in order to purchase a good horse of those raised at that place, which are said to be of the best kind in the republic. But on arriving at the Hacienda, called Instancias Grande, I abandoned the idea, as it was so much out of the way, & having remained a short time at Instancias, I passed the night at Matanzas, very fatigued as it was the first day since the month of May that I had been on horseback.—The general aspect of the country today was mountainous & sterile—nothing of much interest.

23rd. I slept at Gallina, 16 Leagues, a Hacienda belonging to the Marquis del Jaral. It did not appear to me very fertile—more adapted to raising stock than for farming purposes.

Decr. 24th 1833 I arrived at San Luis (15 Leagues from⁵ of Gallina) a little after sunset, & stoped at the tavern de San Antonio, where I met Mr. Maurice Hebenstricke, a merchant from Matamoros. I arrived very tired but less than the former day, rather worse for a bad headache.—

25th. I remained in San Luis Potosi. Mr. Oregis a partner of Dall's came to see me, also Mr. Cayetana Rubio from whom I received the \$100 on the draft from W. S. Parrott. I bought a horse for \$20, in order to put part of the load, that was on the mule, my servant Jerman was riding, so as to travel faster that I might over-

⁵ Word obliterated.

take Genl. Lemus, who had left the day previous. I bought a blanket for 20 rials.—I went to the house of the commandant Genl to enquire for Genl Lemus, & in the office a person told me that he had left for Monterey on the 23rd.

All the streets leading to the public square were still fortified with bulwarks, constructed during the siege.

The city appeared to be growing. It could be, & some day will be the depot for the produce of the neighboring country, for the commerce which will extend itself from Tampico by way of the river Panuco, & by a road from the highest navigable point on the river. A work which in a more civilized & favored country, would be concluded in a year; But here it will be a work of many years, & perhaps of half a century. Texas cotton is here worth \$30 a hundred, in N. Orleans \$10.

Dec 26th 1833	B..... ⁶	Leagues.	
" 27th "	Laborcilla (near to Charcas) ..	20 Leagues.	"
" 28th "	Guadalupe Carnizero	16	"
" 29th "	Vanegas ..	15	"
" 30th "	Salado ..	14	"
" 31th "	Rancho Jesus Maria	15	"
January 1st 1834	Agua Nueva	12	"
" 2nd "	Saltillo at 3 in the afternoon..	9	"

On " 3rd " I was arrested by Genl Lemus by orders from the Secretary of War dated in Mexico 21st December.

The Genl treated me with the greatest attention & delicacy for which I am, & always will be grateful.

On the 4th we left Saltillo.—I traveled in the coach with the Genl and his family.—We slept at Los Muertos.—The weather was very cold, the wind being very strong from the north.—

On the 5th we arrived at la Rinconada.

" " 6 " Monterey.—I was put in a very convenient & clean room, with a guard at the door.—My servant went out & came in when he pleased, & thus everything was furnished me, nothing was wanted but liberty.—On the 7th Horatio Alsberry came to see me.—I wrote to don Luis de la Rosa, to senator Raphael

⁶ Remainder of word and number obliterated.

Llanos, to the governor of the State of Coahuila & Texas, to José Maria Viesca, to the chief of the department of Bexar, to Francisco Ruiz, to the Ayuntamiento of Austin, sending them, & to the governor & to the chief of the department a copy of the answer of the minister concerning the petition of Texas to be a state.—

I sent a copy of my letter to the Ayuntamiento of Austin, to the governor & to the Chief of Department.

I wrote to Williams & to Perry & to D. W. Smith Matamoras. I sent him a demand against the commisariat to collect 796.6 that Williams paid to the troops of Ugartechea & 57.3 belonging to James Ross, also a letter to D. J. Toler concerning the draft of Reynolds against Hebenstricke, instructing Smith to collect the whole of it, & to send the first to Williams, & the draft to W. S. Parrott in Mexico.

Monterey 20th January 1834. I drew on D. W. Smith for \$100 (of Matamoras) which I received from V....⁷ for my expenses to Mexico, & left on this day. We slept at Santa Catarina.—21st at los muertos, the weather bad, with rain & hail.

22nd at Saltillo

23rd Tanque de la Vaca

24th Ventasa

25th Salado

26th Vanegas

27th Guadalupe Carra

28th Charcas

29th Hidionda

30th Garrabatya

31st San Luis

February 1st 1834 Remained at San Luis

2nd Rodriguez

3rd San Bartola

4 Francas—It rained the whole day

5 Atotoxilco. (S.....⁸ a river)

6 Cerritos—a rancho

7 Queretaro

8 Id

⁷ Indecipherable.

⁸ Indecipherable.

9 San Juan del Rio

10 Arroyo Sarco

11 Tula

12 Gua[n]titlan

13 Mexico, where I was put in the inquisition, shut up in the dark dungeon No. 15 & not allowed communication with any one.

14th Feb. 1834.—I heard cannon which were fired at intervals all day as funeral honors to Guerrero who was shot on the 14th Feb 1831.—

15th The visit of the prison today.—I was permitted to walk with a centinel in a yard, alone, to take exercise.—I asked for books, but was not permitted to have any.—

In the dungeon No 15 Ex-inquisition 18th Feb 1834.

Lieutenant Col José Maria Bermuda notified me that my judge & attorney general were appointed. He lives in Santa Ines Street No. 1.

19th The attorney came for me to sign an act.

20th.—In order to understand the affairs of Texas, & to explain them perfectly, it is only necessary to ascertain some very simple points.

1st What means are most resorted to, to move & influence the actions of mankind.—It is interest.

2nd Is it, or not, the interest of Texas to separte herself, even if she were at liberty to do so? No, certainly it is not.

Is it, or not, the interest of the U. States of the North to acquire Texas? It is not, because she would extend her territory too much, & what is worse, she would annex a large district, which would have no interest in common with the rest of the republic. All the rivers of Texas take their rise in Texas, at but little distance from each other, and do not enter the Territories of the north, so as to form bonds of union, as does the river Mississippi with Louisiana & other states adjacent. There is no market in the North for the produce of Texas, & there is in Mexico. Texas is more distant from the city of Washington than from the city of Mexico.—As regards the commerce with Europe, the Mexican flag is equal to that of the North.—What then is the true interest of Texas? It is to have a local government to cement & strengthen

its union with Mexico instead of weakening or breaking it. What Texas wants, is an organization of a local government, & it is of little consequence whether it be part of Coahuila or as a separate state or Territory, provided the organization be a suitable one.—

She is at this time suffering in the departments of, 1st Justice, 2nd colonization, 3rd Indian, 4th Police, & internal improvements, in fine in every department.

22nd Feb 1834 Nothing more of the attorney since the 19th. What a horrible punishment is solitary confinement, shut up in a dungeon with scarcely light enough to distinguish anything.—If I were a criminal it would be another thing, but I am not one.—I have been ensnared & precipitated, but my intentions were pure and correct.—I desired to cement the Union of Texas with Mexico, & to promote the welfare & advancement of my adopted country, by populating the Northern & Eastern frontier. I have been impatient, and have allowed myself to be compromised and ensnared by the political events of last year, & by the excitement caused by them in Texas.—I do not see how I could have avoided what has passed in Texas; my conscience acquits me of anything wrong, except impatience & imprudence, I am in no sense criminal. A public agent should sacrifice himself, life & property, should it become necessary in order to carry out the views of his constituents. I perhaps have followed this rule to an extreme.

Sunday 23rd Feb. 1838.⁹

Philanthropy is but another name for trouble. I have laboured with pure intentions to benefit others, & especially to advance & improve my adopted country; & what have I gained? Enemies, persecution, imprisonment, accused of ingratitude to Mexico, which is the most unjust of all accusations that can possibly be brought against me.—If I have been ungrateful to any one, it is to myself & family, for I have neglected my & their interests & happiness to labor for others.—My poor *sister* who removed to the wilderness of Texas with her large family owing to my solicitations, & left a comfortable home & a large circle of warm & kind friends.—My poor sister, how much is she now suffering on my account.—How happy I could have been on a farm alongside of my brother-in-law far from all the cares & difficulties that now surround me.—But I

⁹ This date is an evident slip of the copyist's pen.

thought it was my duty to obey the call of the people, & go to Mexico as their agent.—I have sacrificed myself to serve them, & in all probability the only return I shall receive, will be abuse & ingratitude.

It is horrible that I should have lived to find myself on the verge of misanthropy, soured & disgusted with mankind. My difficulties have proceeded from an excess of zeal to serve others, but I shall be calumniated by them, Although I have loved the whole human family with the most unbounded enthusiasm & confidence.—I have been impatient, and consequently imprudent, but not criminal in anything. My conscience is clear, but that will not save me from calumny & misconstruction. Nature gave me too much sensibility & too yealding a disposition, too ready to listen to, & be influenced by those who I believed were friends & honest men, and too sensible & tender at their censure or discontent.—The heart of a public man should be made of cold & hard materials, & not of the fine & delicate chords of sensibility.—He should be impervious to momentary impulse passion or impatience.—I am naturally impatient, & irritable.

23rd Feb. Mr. Bermudor came to notify me that my cause was taken from him, & that he was no longer my attorney.

I was visited by Padre Muldoon, who had with great difficulty obtained this privilege. He was allowed to speak to me only in Spanish in presence of the Commandant of the prison, manifesting his friendship &c. I permitted him to make a bargain with some Tavern keeper for my meals, which he did, & sent me wine & cheese, he promised to send me books.

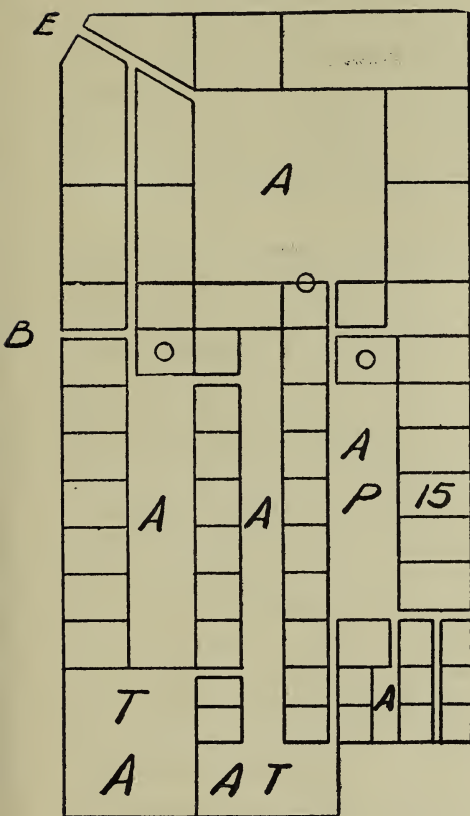
24th I received my food according to Muldoon's promise, but no books. I supposed he has not been permitted to send them.—Time drags on heavily.

25th The new attorney general came to notify me of his appointment. He did not leave his name or residence.

February 16 Dungeon No 15

Ex-inquisition

San Domingo Street.



A Yards

E Entrance

B Do

ooo Stair cases

P Pillar or fountain of water

T Trees in the yards

The building behind the

yard **AP** is one story high,

all the rest is two stories.

The walls of my cell No 15 have a number of figures of snakes, landscapes &c, drawn by a prisoner of the inquisition, more than 60 years ago.

27th Feb.—Theory & practice have clearly demonstrated that the Mexican Republic will not make rapid progress, until she has other exports than gold & silver, because these metals disappear immediately to pay for the imports, and what is worse, agriculture & the arts do not flourish, & very many useful laborers without

employment deliver themselves up to vices & to idleness.—It is necessary to stimulate agriculture & the exportation of its products.—On the coast where the transportation to the ports is not distant or costly, nothing more is wanted but labor, population, & capital well directed in the cultivation of the land.—In the interior there is a sufficient population, but without being well directed—and transportation is difficult & costly, as it always must be, on backs of beasts of burthen, and untill they improve & open roads for wagons, instead of roads for mules.—Nature has pointed out the ports for exportation, Vera Cruz, Tampico & Matamoros are the most important.—

There are but few navigable rivers, but up to this time no use or profit has been derived from those which are navigable.—The river Alvarado is navigable for a considerable distance in the interior, and may be very useful for the exports of an extensive & fertile country.—From the head of navigation on this river, wagon roads might be opened to the States of Puebla & Oaxaca, & the produce could be exported at a trifling expense, to that which is paid at this time.—Thus Alvarado would be a depot, & thence the produce would be carried to Vera Cruz by steamboats & schooners.—The capability of this river for navigation is not yet known, & it is worthy the attention of government to send experienced engineers to examine & explore it, also the best routes for carriage roads to the interior.

The river Panuco is another which will one day be very important to the most interesting part of the republic.—It is I say worthy the earliest attention of the government to examine the capability of this river for navigation, and the practicability of roads from the head of navigation to Queretaro, San Luis Potosi, & Mexico through the plains of Apam.

With a good road to Queretaro all the Bajio of the rich State of Guanajuato would have great facilities to export the products of agriculture.

The Rio Grande is another important channel, & in time of high water, would serve to export the produce as far as Chihuahua.

In the South there is the river of Guaracualco & of Tabasco navigable.—Also on the coast of the Pacific there are some rivers which are navigable, or susceptible of important improvements.

The idea that the interior of Mexico is without resources for

transportation to the coast, is erroneous, as experience will one day demonstrate. They ought to dedicate themselves to opening roads on McAdam's plan, from Mexico to Vera-Cruz—from the same to Acapulco, to San Luis Potosi through Queretaro to the head of navigation on Panuco river, & from that point to Queretaro & San Luis, extending the former to as far as Guadalajara, & the latter to Zacatecas.

Roads from the head of navigation on Alvarado river as far as Puebla & Oaxaca. All these roads should be carriage roads, & when finished, they should proceed to open lateral roads to intersect the principal ones.

A road from the ports of Texas to the paso del Norte & New Mexico with the object of attracting the commerce of \$2000000 annually, to the ports & territory of the republic, which now comes from Missouri. This commerce would be a very strong chain to bind Texas to the federation, & all the expenses &c erogated by the merchants for the transportation of merchandize would be made in the Mexican territory, & would result to the benefit of the Mexicans.

March 2nd 1834.—I obtained today a book—a tale called yes & no—Muldoon failed in his promise to send me books—I prefer bread & water with books, to the best of eating without them.—In a dungeon, the mind & thoughts require aliment more than the body.

March 4th. Four dollars were paid to me for my support, the only money I have received since my entrance.—

13th At half past ten at night there was a very severe earthquake.

March 15th At six in the morning an earthquake more severe than the other.

March 16th Sunday.

I received "l'histoire de Philippe 2nd roi d'Espagne" an unnaturalized brute—a devil—a monster—in fine as much as can be expressed or imagined of evil, of hypocrisy, & of cruelty.—He was a blind, obedient and faithful servant of Rome—that mother of executioners, assassins, robbers & tyrants who have desolated the civilized world, filling it with mourning, terror, & ruin, & degrading mankind far below the level of brutes.

A Lion protects its offspring, but Philip the 2nd, *Catholic King*

of Spain is the executioner of his own son, the unfortunate Don Carlos; who was delivered by his *most Christian* father's own hands to the Inquisitors, and by these *Holy agents* of Rome, condemned to death.

The brute of a father said to the Inquisitors—'Have no regard to the rank which the prince holds in the State; do your duty, & know that zeal for religion has stifled all paternal love in me.'

At the moment of signing the sentence of death against his son, he said, directing himself to God, 'You know Lord I have no other motive than sustaining your interests, & the glory of your Holy name.'

Is it possible to believe that mankind have been able to look upon such beasts, as the representatives of God on the earth! Kings & rulers—executioners of innocent children—Robbers, all by *divine providence*, & to sustain the interests & Glory of God! The massacre at Saint Bartholomy on the 24th August 1572 in France, in which more than 70,000 Frenchmen perished, treacherously assassinated by order of the King, Charles IX, was an act very worthy of Rome & very characteristic of the kind of *piety* which governed the councils of the conclave of Saint Peter.

People of Mexico! can you throw a glance at the history of Rome, without feeling a pity for your ancestors, & without shaking off at once that religious yoke which has held, & to this day holds you enslaved? Can ye contemplate this edifice—this Inquisition—and call to your memories what has passed within its walls under the name of religion; without shuddering at the past, and making an effort in favour of religious toleration, so that ye may secure your liberties & safety for the future?

The Inquisition was established in Mexico & in Lima by Philip 2nd in 1573, and the first auto da fe in Mexico was in 1574.

March 17th I walked for half an hour in the court where they tell me the autos-da-fe were held—that is, where they burned the unfortunate, whom policy or robbery assassinated under the name of religion.—Fanaticism furnishes a cloak for everything, and is the same with all nations & religions.—Elizabeth, protestant queen of England, sacrificed her relation, Mary of Scotland, to prevent a catholic sovereign ascending the throne, and at the time of the unhappy queen's head being taken off they shouted, "Thus perish the enemies of the religion of Christ." All this was a cloak, &

nothing more, because the crime of Mary consisted in being beautiful, & beloved by every one, and Elizabeth made use of the *cloak* of religion & policy to cover her own envy, & to gratify it.—At the same time Philip 2nd was kindling the fires of the Autos-da-fe under the pretext of religion, in order to rob, & to sustain his despotic power.

March 19th For the national aggrandizement of the Mexican Republic, are required

1st Religious toleration

2nd Foreign emigration

3rd Protection of agriculture, in order to have a surplus of agricultural products, so as to pay for importations & thus avoid the export of the entire products of the mines, which at this time is leaving the country for the purchase of foreign merchandize.

4th The improvement of the navigation of all the rivers, and the opening of carriage roads from the last navigable point on them, to the interior.

5th The establishment of manufactories—but this ought to be the last step in the national progress.—Manufactories ought to be established after agriculture, & with a dense population.—Without these bases they can neither be useful nor profitable, except by force of restrictions, privileges & monopolies, which are always prejudicial to the people or the great mass of the nation.

March 20th. This day I was notified by a person from the commandant general that I must return the \$20 that I had received, because I ought to receive my daily allowance from another quarter—but he did not say from what quarter or authority.

I returned the \$20.—Recd.	March	4th	\$4.
"	"	9th	\$4
"	"	12th	\$4
"	"	16	\$4
"	"	20th	\$4
			—
			\$20

This day I also sent away my servant, Medina & ceased to receive my meals from Offutt's

22nd Sergeant Augustin Gonzalez presented himself in my dun-

geon on the part of the commandant of the place, Don Domingo Sarmiento, requested the loan of thirty dollars, which I lent to the said commandant.

I also lent ten to the said Sergeant Gonzalez.

Expenses		
	To Medina ..	\$4.
	Book ..	1
	Barber (chili) ..	0.3½
13th March	Medina ..	6.
	Washerwoman ..	.3
20	Medina ..	5.
22	Lent to the Commandant.....	30
"	" Sergeant.....	10
Bro't forward from daily expenses, to		
26th March		17.9½
Table & chair		2.
From 26th March to 3rd April		6.00

4th April. I returned to the person who has paid me, the \$20 which I had received from him. He awoke me from a profound sleep.

April 4th 1834.—I received \$18 dollars from Don Victor Blanco lent.—Expenses from 3rd to 11th April..... \$4.7

11th April I commenced receiving my breakfast & dinner from Mr Offutt No 7 Tiburcio Street.

12th April—It would be an injury to the U. States of the north, to unite Texas to themselves, or to see it made a state of the Mexican federation.

1st Because it would be extending too much territory of that Republic, receiving within its limits a country which is entirely isolated from all the other states, by its geographical situation, & by all the interests of agriculture, manufactures & commerce.

2nd Because Texas as a state, would flourish with rapidity, & would extend the planting of cotton throughout that country, & thence along the whole coast of the Mexican Gulf to so great a degree, that it would tend to reduce the price of that product in the European markets. It would also extend the manufacture of cotton cloth.—The evident result of this would be to injure all the

states south of Virginia, whose chief produce & almost the only one which is valuable, is cotton.—The Sugar & Rice of the Mexican States on the Gulf of Mexico, would also compete with the Sugar of Louisiana, & the Rice of Georgia & Carolina.—

On the other hand, the progress of Texas would promote the power of the Mexican Nation to a great degree, by the increase of their physical force, their agriculture, their manufactures, & of which is of more importance than all, their exports of produce, avoiding thereby the extraction of metals from the mines.—The erection of Texas to a State of the Mexican Republic in very few years would cause a moral change of the greatest importance in favour of the Mexican States, & to the prejudice of the U. States of the north, & would even have an influence in the markets of Europe by reducing the price of cotton, and by the gradual increase of manufactories in the Mexican Territory.—

April 13th—In my first exploring trip in Texas in 1821 I had a very good old man with me, who had been raised on the frontiers, and was a first rate hunter.—We had not been many days in the wilderness before he told me “you are too impatient to make a hunter.” Scarcely a day passed that he did not say to me “You are too impatient—you wish to go too fast. I was so once but fifty years experience has learnt me that there is nothing in this world like patience.” Before my trip was ended I saw the benefit of his maxim and I determined to adopt it as a rule in settling the colony which I was then about to commence in Texas. Some have accused me of adhering to this rule and to a system of conciliation and mildness, with too much obstinacy—I do not think I have, tho’ perhaps I am not a competent judge—I can however say, that I believe the greatest error I ever committed was in departing from that rule as I did in the city of Mexico in October 1833—I lost patience at the delays in getting the business of the people of Texas despatched and in a moment of impatience wrote an imprudent and perhaps an intemperate letter to the Ayuntamiento of Bexar dated 2nd of October 1833—I can say with truth that a combination of circumstances occurred about that time to make me impatient & my intentions were pure & patriotic as a Mexican citizen, for I had every reason to believe that the people of Texas would not suffer the month of November to pass without organizing a local government, and in that event, it is very evident that it would

have been much better to organize by a harmonious consultation of the respective local civil authorities of the municipalities called *Ayuntamientos*, than by a popular commotion, without the intervention of any recognised legal existing authority.

The circumstances of the case, and the purity of my motives are certainly worthy of consideration—

Texas when I left in 1833 was almost in a state of nature as to its local government—it was in danger of anarchy on the one hand, and of being destroyed by the uncivilized and hostile Indians on the other—these things oppressed me and I may have lost patience—

“The inestimable value of the liberty of the press would not be known, if it were not evident, that with it nothing is to be feared from any arbitrary power.”

Political evils of society are like bad habits in individuals easy to cure in their birth or origin, but very difficult when they have taken deep root.—The political evils of Texas are in their birth, and easy to cure by a proper organization of the local government—

“People in office do more wrong by the foolish things they say, than by the foolish acts they commit.”—So said Terray, minister of Louis 15th, on the accession of Louis 16th

The fable of Prometheus, whose heart was devoured every day by a vulture, being renewed at night for the horrible feast of the day following, represents the imaginary sufferings of mankind—We arise in the morning filled with projects, desires and occupations which destroy our felicity, like the vulture eating the heart of Prometheus—

At night we throw ourselves into bed tired out and miserable, solely that our natures may recover strength to sustain the miseries of the following day—What madness! what folly it is, to permit our thoughts to be converted into the vulture of Prometheus! how to avoid it? Limiting ourselves to what is necessary, to what is substantial, and enjoying life as it comes, without thinking or troubling ourselves about that which we do not possess, or which does not concern us, nor about what may happen hereafter—Very well, according to this man would become a being mentally torpid, that would only exist to breathe, eat and sleep—an animal. Well, what remedy is there then? The remedy is found in conducting ourselves justly, prudently and rationally between an extreme of cares,

and an extreme of torpidity—What rule is there to ascertain this? When we find ourselves restless and the head or passions excited for any project or idea, to analyze it, applying to it these questions. Is it just, is it practicable, is it necessary—what benefit will result to our fellow men or to ourselves—what may be the immediate or future consequences of it? Well, according to this we should never act mentally or physically unless justice, reason and judgement, previous examination and mature analysis should qualify as just, practicable, necessary &c whatever we think of doing—and we should never act with impatience, impulse or passion—Yes, so it is. And how many men act thus? very few—perhaps none. Unfortunately the *duty* & the *acts* of mankind in general are like the religion of Rome, in theory divine, in practice infernal. How can this be said of a religion whose foundation is perfect harmony, a union of principles, & of action? Because the history and conduct of Rome demonstrate it, from the time her first Bishop usurped from the other Bishops the right of governing their respective dioceses as to spiritual matters. The power of the pope originated from usurpation, and not from divine creation & in order not to deviate from the principles of its origin the pontiffs have gone on usurping and robbing from that time to the present, adding temporal or regal powers, as if it were possible that God, or divine and spiritual things, could be divine, perfect, pure & immortal; and at the same time human, imperfect, corrupt, tangible, sensual & mortal, thus uniting a contradiction which is palpable, monstrous and subversive of the foundation of the religion of Christ—which foundation is *purity*. How can purity exist in unity with the passions, interests & corruptions of temporal or human things? That which is pure, perfect, & immortal, cannot be united with that which is impure, imperfect, & mortal, & form a compound body, thing, or essence, without changing its nature or original principles; as for example, white can not be mixed with black, & always remain white; nevertheless mankind have seen the pure white of the religion of Christ mixed by Rome with the black passions, & human things without being aware that in this union the white has disappeared & the black has predominated.—What blindness, what prejudice, what ignorance! Those who are in favour of religious intolerance, and of the temporal power of the clergy, have not analyzed their thoughts by the rule before mentioned, nor by any other rule, ex-

cept by that of their private interest, of despotism, injustice, robbery & usurpation, or by ignorance unworthy of civilized men.

In the dungeon 20th April 1834¹⁰

April 26th 1834 I obtained two volumes of the "Oeuvres de Platon traduites par Victor Cousin".

27th April. Political philosophy—

The people, or I should say the patriots of Mexico conceived, put in execution, & are perfecting the most difficult, grand & noble work, which has been known & seen in the world since the days of Adam—the establishment of a sistem of government popular, liberal, & free, in a country where the customs & opinions of the people are diametrically opposed & repugnant to such a sistem, a work more worthy divine power, than of human debility. Political writers have set it down as a dogma or axiom that in the formation of Governments a natural course of things should be followed—what they call the natural course of things, is that Government, should be constructed, according to the customs prejudices and existing ideas of the great mass of the people, & that it would be unnatural, forcible & dangerous to attempt to regulate or accomodate these customs, prejudices & ideas to a system to which the people were repugnant & opposed. Up to this time we have seen mankind, who had to organize themselves, follow the natural course spoken of by the political writers or philosophers, and Mexico alone has the glory of having demonstrated the contrary, and of proving that the genuine principles of liberty & of truth are of divine origin, and as such are stronger than the customs and erroneous ideas which are of human origin, & therefore that the first principles are of more value, even in the abstract, than the second, notwithstanding the last are rooted and fortified by the practice of centuries. The United States of the North have the glory of having demonstrated, the practicability & advantage of a popular system for a people whose customs & opinions were prepared beforehand, for that system. This was a grand step which excited the admiration of the civilized world, & caused the thrones & gothic institutions of Europe to tremble. Mexico has the glory of having done much more & has gone beyond the people of the north in hav-

¹⁰ This date evidently refers back.

ing demonstrated that the principles of truth & liberty in the abstract, or of themselves are essentially more strong than the prejudices & erroneous customs, & that the latter may be destroyed notwithstanding the force which they derive, from the practice of centuries, or from the veneration which their great antiquity may attract for them.

What a flattering lesson is this for oppressed nations, & how fearful a one for the tyrants of Europe: they, with the Pope (falsely called the most holy) at their head sustain that their power is of divine origin & that it is necessary to exercise it on the people because they cannot govern themselves, it may be, as some say, because they are naturally degraded & cannot pass above the level of slaves; or it may be, as others say, because their manners & customs are so bad that they cannot enjoy freedom without injury to themselves, like children with a penknife. Mexico answers this, denying that despotism & usurpation have such a divine origin, on the contrary, that their origin is human & therefore must yield to that which is truly divine or to principles of Liberty & truth.

These principles find a sympathy, a reception and a natural & instinctive or spontaneous protection in that part of man which has equally a divine origin, that is to say in *the soul*; because both spring from the same source, which is divine & consequently stronger than human inventions & things & must prevail.

If this power of kings & of other despots is of divine origin it should not perish or be weakened because otherwise we must admit that the works of providence are mortal & perishable.

April 29. Today padre Muldoon came to visit me by permission of President Santana, & so I knew that the president had returned to Mexico six days ago—I did not know it before—I know nothing of what passes outside, no one is allowed to speak to me, nor am I with anybody I am *incomunicadisimo*. What a system of jurisprudence is this of confining those accused or suspected without permitting them to take any steps to make manifest their innocence or to procure proofs for their trial, they can neither consult with counsel, lawyer, friend or anybody—I do not know of what I am accused how can I prepare my defence? perhaps, I will have to send to Texas for proofs of my innocence, how can I do so, being shut up—& incommunicated. This system may be in conformity with law, but I am ignorant of which law—or of what rights the

party accused has, but it is very certain that such a system is in no wise in conformity with justice, reason or common sense.

Mail from Nacogdoches to river Sabine at Gains ferry every two weeks, 20 leagues distant.

This mail ought to arrive from the Sabine at Nacogdoches the day before the mail leaves that place for Bexar. I recommend James Gains as postmaster on the Sabine. He is a Mexican citizen since the year 1820 married to a Mexican & understands the English and Spanish languages, & has a house & property on the river Sabine sufficient to live with comfort.

The mail from the U. S. of the North arrives at the Sabine in front of Gains house, so that it will be very easy to change the correspondence at that point, and so establish a communication by mail from all places in Mexico with every place in the United States of the North. For the said exchange all that is necessary is that the government of the north should be advised through their charge here, of the desire of this Govt to change the correspondence on the Sabine.

The postage on letters & papers on each side should be paid to the line, & after passing should pay such postage as is required by the laws of the respective republics.

CAPTAIN ADOLPHUS STERNE.

W. P. ZUBER.

[I have written this sketch mainly from one personal conversation with Mr. Charles Adolphus Sterne, from letters, written in compliance with my request, by him and his sister, Mrs. Rosine Ryan¹; and from the subject's general reputation; but partly from works on Texas history.—W. P. Z.]

Adolphus Sterne was born in Cologne, Germany, in January, 1800. In 1824 he came from Germany, by way of New Orleans, Louisiana, to Nacogdoches, Texas, and settled there as a merchant. He purchased his supplies in New Orleans, shipped them on steamboats up the Mississippi and Red rivers to Natchitoches, and had them hauled thence on wagons to Nacogdoches. He resided at Nacogdoches during the remainder of his life.

Here, in spite of his German antecedents, Mr. Sterne was regarded as an American. The Mexican population so regarded all white people, except those speaking the Spanish language. Mr. Sterne had a good English education and spoke the English language plainly, and he was not easily distinguishable from native-born Americans. His instinctive preference was for his own race; and hence, when differences arose between the Americans and the Mexicans, his sympathies were with the former.

In 1826 Mr. Sterne became identified with the local political party known as the "Fredonians." His service was to purchase munitions of war in New Orleans, and smuggle them to his friends in Texas. He packed gun-flints, powder, and lead, into bales of dry-goods and barrels of coffee, and thus sent them to Nacogdoches, where he afterwards delivered them to Benjamin Edwards and Martin Palmer. But he was watched by the secret agents of the Mexican consul at New Orleans. They discovered his device, and reported it to the consul, and he reported it to his Government and to Norris, the Anti-Fredonian alcalde at Nacogdoches.

¹ Mr. Sterne and Mrs. Ryan are son and daughter to Captain Adolphus Sterne,

He was one of the twenty Fredonians captured by Ahumada's troops in January, 1827; and, on account of his smuggling munitions of war to the enemy, Ahumada excepted him from his compliance with Austin's request to release his prisoners. He was tried by a military court, convicted of treason, and condemned to be shot; but his execution was necessarily delayed till his sentence could be sent to Saltillo, approved by the military department commander, General Teran, and returned. While awaiting Teran's reply, he was chained and confined in the cuartel. But the charge against him had not been *positively* proven, and he entertained a bright hope of being pardoned, which was realized.

It has often been said that no Free Mason can be lawfully punished for crime if the power of conviction or pardon rests in one or more members of the fraternity. All intelligent Free Masons know this to be false; but, in cases of purely political offenses, Masonry has frequently been the means of saving life. Mr. Sterne being a Mason of high degree, his Masonic friends in New Orleans interceded for him through the agency of General Teran, who was also a Mason of high rank, and Teran procured his pardon. But his liberation was on parole not again to bear arms against the Mexican government, nor to aid its enemies.

Aware of the efforts of his friends in New Orleans to procure his pardon, and confident of their success, Mr. Sterne endured his imprisonment, not only patiently, but also cheerfully. An interesting incident illustrates his confidence of final release. Being a man of pleasant manners, he enjoyed the friendship of his guards; and his cheerful deportment satisfied them that he would not try to escape, but that he preferred patiently to await the approval or disapproval of his sentence. Hence they gave to him as much liberty as they could, and became, in fact, careless. He purposely wore loose boots, which he could easily draw off and on his feet, and his chain was locked around one of them. One evening his guards locked the doors of his room, and went to a fandango. Left alone, he drew the boot off his chained leg, and the chain with it. Then he raised a sash, went out through a window, proceeded to his store, dressed himself properly, and made his way also to the fandango. There he found his guards, who were much startled by his arrival; but he and they promised not to inform

against each other, and all were easy. One of his friends, in surprise, said to him,

"Why, Sterne, how came you here?"

"I walked," was his reply.

"But why are you here?"

"To dance, of course."

And dance he did. In good time, he returned to his store, resumed his prison garb, went back to his prison, reëntered it through the window, and drew on his boot and the chain with it. When his guards returned, they found him as they had left him.

If the Mexican officers ever learned of this adventure, they apparently never noticed it.

In 1832 Mr. Sterne was with the Texians² in the battle of Nacogdoches, and in pursuit of the Mexicans to and across the Angelina river; but, being under parole, he did not use a gun. Yet he piloted the troops, informed them concerning the places of Mexican rendezvous, and carried water to them. Fortunately for him, the Texians were victorious.

In 1835, in New Orleans, Mr. Sterne raised the company called the "New Orleans Grays," which assisted Colonels Milam and Johnson in capturing Bexar. Among the men of that company were Thomas F. Lubbock, Henry S. Fisher, Thomas William Ward, John D. McLeod, and other men distinguished in Texas history.³

In 1839 Adolphus Sterne was captain of a company of volunteers in the command of General Douglass, in the Cherokee war, which company he commanded in the battle of Neches, on July 16th, 1839. In that battle, which continued during an hour and a half or two hours, the Cherokees were defeated with a loss of about one hundred men, killed and wounded. The forces of the Texians were estimated at 500, and those of the Indians at 800, the latter not all Cherokees. Among the slain of the Cherokees was their grand chief Bowls. The loss of the Texians was only five killed, and twenty-seven wounded.⁴ In this battle Captain Sterne was slightly wounded. It virtually closed our war with the Cherokees, as they

[² Mr. Zuber, like perhaps most of the Texas veterans, prefers this spelling.—EDITOR QUARTERLY.]

³ See Thrall's History of Texas, p. 220, note.

⁴ See Bancroft's North Mexican States and Texas, II, pp. 323, 324.

no longer occupied Texas soil, and their subsequent hostilities were perpetrated only on incursions into our country.

Mr. Sterne at different times filled the civil offices of justice of the peace, county commissioner, post master, and state senator. He also held a commission (yet in possession of his family) signed by Sam Houston, President of the Republic of Texas, appointing him on the presidential staff, with the rank of major. He was an original member of the Grand Lodge of Texas, A. F. & A. M. He helped to organize it, on December 20th, 1837, and was then elected deputy grand master.⁵

As to Mr. Sterne's religion, he was identified with the Roman Catholic Church, his mother and his wife both being devoted members thereof.

My father, Abraham Zuber, became acquainted with Adolphus Sterne in 1827, and was ever afterward his warm personal friend. I myself never saw him; but I have gathered the substance of the following description of his character from what I have heard my father and other friends say of him.

In address and conversation, he was courteous, social, cheerful, and refined. In temper, he was mild; in principle, pure; in purpose, firm; in patriotism, devoted; in statement, candid; in business, honorable; in friendship, faithful. Of course, he was beloved and honored by those who were so fortunate as to know him personally.

Captain Sterne died in New Orleans, in March, 1852, at the age of fifty-two years, and about two months. In April of the same year, his remains were removed to his home at Nacogdoches, and there buried.

Captain Sterne was blessed with a model wife. Mrs. Eva Catherine Rosine Sterne, *née* Ruff, was born at Eslenger, kingdom of Wurtemberg, Germany, July 23d, 1809. Of the date of her immigration to America, I have no account. Her marriage to Adolphus Sterne occurred at Natchitoches, Louisiana, June 2d, 1828, when she was not quite nineteen years old. Thenceforth her home was in Nacogdoches, till 1859. Mrs. Sterne was a Christian lady, a devoted Catholic, and distinguished for her plainness, sociability, conscientiousness, discretion, and firmness; for devotion to her husband and children, and to their friends; also for her hospitality, charity,

⁵ See Sayles' *Masonic Jurisprudence of Texas*, 4th Ed. pp. 218-19.

and other Christian virtues. Like her husband, she was an American and a patriot. Her home in Nacogdoches was the rendezvous of the women and children of the surrounding country, during the perilous times when the men were on duty and under arms.

The published report of the unveiling of the Burnet-Sherman monument, at Lake View Cemetery, Galveston Island, on March 2, 1894, in a tribute to Mrs. Rosine Ryan, says of Mrs. Sterne,—

“Mrs. Ryan’s mother was god-mother to General Houston, who presented her with a valuable set of jewelry, which she afterward wore at the fiftieth anniversary of the Declaration of Independence.”

In compliance with my request, Mrs. Ryan kindly explained this statement to me as follows: Recognizing the requirement of the constitution and laws of Mexico, that a prerequisite to citizenship and to holding office was to support the Roman Catholic Church, General Sam Houston was baptized into that church; and had Mrs. Sterne for his sponsor. Afterward, as is well known, General Houston, with the other members of the Convention, signed the Declaration of Independence, at Washington-on-the-Brazos, on the second day of March, 1836, which was his own birthday. Later he sent to Mrs. Sterne a handsome set of jewelry, with the request that she would wear it on each succeeding anniversary of that day. She did so till bereavement and sorrow came, when she laid the jewels aside. But, at the laying of the corner-stone of the capitol at Austin, at which she was present, on March 2, 1886, that being the fiftieth anniversary of the Declaration, her regard for the two events, occurring just fifty years apart, induced her again to wear them on that day.

In 1859 Mrs. Sterne left Nacogdoches, where she had resided during about thirty-one years, and settled in Austin. Thence, in 1874 or 1875, she removed with her daughter, Mrs. Ryan, to Houston, which was her last earthly home.

Mrs. Sterne’s daughter, Mrs. Ryan, on May 4th, 1895, wrote of her: “Mrs. Sterne is, at this date, living in Houston, Texas, and, at the good old age of eighty-six years, is well—as bright as when a young woman, fleeing on horseback with her babies from the Mexicans, in the troublous days of the thirties.”

The minutes of the Texas Veteran Association for 1896 shewed

that this worthy widow of a worthy Texas veteran yet lived, but the minutes for 1897 shewed that she was dead.

Captain and Mrs. Sterne had seven children, whose names, with the addresses of those yet alive, are as follows:

1. Mrs. Eva Helena Eugenia Barrett, widow of the late Thomas C. Barrett, Austin, Texas.
2. Charles Adolphus Sterne, Palestine, Texas.
3. Joseph Amador Sterne, deceased.
4. William Logan Sterne, deceased.
5. Placide Rusk Sterne, New York City.
6. Mrs. Laura Theresa Cave, deceased. Her husband, Major E. W. Cave, resides in Houston, Texas.
7. Mrs. Rosine Ryan, widow of the late William Aurelius Ryan, Houston, Texas.

THE FOUNDING OF THE FIRST TEXAS MUNICIPALITY.

I. J. COX.

[In the preparation of this article three original manuscripts have been consulted and these will be referred to by appropriate abbreviations, as follows: (1) "Historia del Descubrimiento y Poblacion de Texas hasta el año de 1730. Escrita por el Padre J. Melchor y Talamantes," will be referred to as "Talamantes." The original of this is found in the Archivo General de Mexico, Seccion de Historia, Tomo 43. (2) The collection of the various decrees relating to the transportation of settlers from the Canary Islands to Texas is found in Volume 84 of the same section, under the title "Colonos para Texas." Reference will be made to the separate decrees and reports. (3) "Representacion de la Villa de S.^{ra} Fernando al S.^{ra} Gobernador de Texas, Varon de Ripperda," is found in Volume 28 of the same section. The manuscript will be referred to simply as "Representacion."—I. J. C.]

Previous to 1730, Spanish operations in Texas were either of a military or religious character, and were only temporary in effect. The object of the Spanish authorities, to prevent the encroachments of the French upon Texas territory, was but imperfectly realized. After three successive attempts, the missions of Eastern Texas were abandoned. The only result of four costly *entradas* by the governors of Coahuila was the extension of the frontier line of Spanish occupation from the Rio Grande to the San Antonio river, where five struggling missions and a presidial garrison of forty-three men remained as the only outposts of Spanish civilization in Texas.

The method of reducing the province by the combined efforts of missionary and soldier had resulted in utter failure. The reasons for this are not hard to find. In the first place, the friars were working with hopeless material. The Texas Indians had neither the aptitude nor the desire for civilization. Then the scanty returns of the friars' labor were wholly lost by lack of support, at critical times, from the home government. This may have been due, in a measure, to some possible dissension between the rival Franciscan colleges of Querétaro and Zacatecas.¹ But even on

¹ Talamantes, par. 30.

the field of their labors, their task was a vain one, because of the brutal and licentious conduct of the presidial soldiers toward the Indians. Those who should have been the support of the mission movement proved to be its greatest enemies, and contributed not a little to its ultimate failure.

With the lack of success of missionary and presidial effort, there remained but one resource known to Spanish colonization—the creation of a municipality. The Marquis of Aguayo had already recommended this.² The Padre Espinosa, at the same time, had represented to the Viceroy, Riviera, the importance of a chosen population, well supplied with farming implements and domestic animals, as an object lesson to the neophytes. He asked that married men, with their families, should form the guards for the missions; that they should enjoy the pay of soldiers for two years, meanwhile cultivating lands assigned to them, and, at the end of that time, receive a title to the lands they were cultivating. Some poor families of the City of Mexico volunteered for this service, but the great distance precluded the possibility of using them. Levies were made in cities nearer Texas, and among the drafted colonists were many released from the prisons. With such helpers, Aguayo began the work of re-establishing the missions in his famous *entrada* of 1721.³

Upon the recommendation of the Viceroy, the King determined to people Texas as a more effectual protection against the French. Accordingly, in 1722, he gave orders for the transportation of 400 families from the Canary Islands to that province.⁴ Little attention seems to have been paid to this order, but a later cedula of February 14, 1729, bids every vessel clearing for Havana to carry ten or twelve families, destined for Texas. This seems to have been more successful, for we learn the next year that a company of colonists from the Canary Islands are at the little pueblo of Guantitlan, near Mexico, ready to engage in the arduous task of subduing the wild domain of Texas.⁵

² Bancroft: North Mexican States and Texas, I, 631.

³ Talamantes, par. 25, 26.

⁴ Bancroft, *loc. cit.*, gives date as 1722. Representacion gives the date as 1729, probably referring to the later cedula.

⁵ Decree of Casa Fuerte, Sept. 9, 1730.

On the banks of the San Antonio river, near the spot selected for the new settlement, there were already located the presidio of San Antonio de Bexar and five missions. Three of these had recently been transplanted from Eastern Texas.⁶ Only one of them, San José de Aguayo, had been founded originally on this river. The remaining mission, San Antonio de Valero, had been removed from the banks of the Rio Grande. This mission, with the presidio, formed the nucleus of the modern city of San Antonio. Talamantes mentions the sending, in 1718, of a company of soldiers to the banks of the San Antonio river. The Viceroy, Marquis de Valero, had ordered Governor Alarcon of Coahuila to send fifty soldiers of good character to that river. He sent forward a less number of questionable character. At the same time the mission of San Antonio was removed from the Rio Grande.⁷ In a report of 1794 Governor Munoz says that San Antonio was garrisoned in 1715. But as this was before the expedition of St. Denis and Ramon, his statement is more than doubtful. Father Talamantes had access to the best of authorities, the records of the Franciscan colleges of Zacatecas and Querétaro, and his statement that both presidio and mission were founded in 1718 may be taken as determining the date of the founding of San Antonio. All that remained, then, was to add the third element of Spanish colonization—a fully equipped municipality, and the settlement on the San Antonio would complete the full course of Spanish development.

We first hear of the families from the Canary Islands on the 9th of September, 1730. On that day the notary public of the pueblo of Guantitlan formed a list of the various families comprising the new colonists, with a full description of each individual. From this list we learn that the early settlers-to-be of the new villa were as follows: Juan Leal Gonzal, wife, three sons, and one daughter; Juan Carbelo, wife, two sons, and three daughters; Juan Leal y Moso (son of the first man), wife, four sons, and one daughter; Antonio Santio [Santos?], wife, one son, and four daughters; José Padron, and wife; Manuel de la Nis [Niz?], wife, and daughter; Salvador Rodriguez, wife and son; Maria Rodriguez (widow of Juan Cabrara, who died near Vera Cruz), two sons, and one daughter;

⁶ Talamantes, par. 29.

⁷ Ibid., par. 22.

Maria Rodriguez (widow of Juan Rodriguez Granadillo), and two sons; Maria Melian (widow of Luca Delgado), three sons, and one daughter; five single men: Antonio Rodriguez, Phelipe Perez, José Antonio Perez, Martin Lorenzo de Armas, and Ignacio Lorenzo de Armas—a total of 52 persons. In addition to the names, there was given a full description of each person, comprising the place of his birth, the names of his parents, his station in life, his occupation, and his physical characteristics. The latter were also given for each child. From this description we learn that the colonists came from the islands of Teneriffe, Palma, and Lanzarote.⁸

We next take up the report of the auditor-general, and from it we learn that Francisco Dubal had acted as the conductor of the party from Vera Cruz. The auditor-general says that Dubal shall continue to act in the same capacity and proceeds to map out the daily journeys between Quantitlan and Saltillo. The list contained twenty-five journeys and added four extra days for necessary stops, thus allowing them twenty-nine days to complete the distance (150 to 170 leagues) between Quantitlan and Saltillo.

Since September 6th each person had enjoyed a grant from the royal treasury of four reales per day. In making the estimates for the journey to Saltillo, the auditor-general mentions the number of colonists as fifty-six, although the list of the notary public contains only fifty-two names. As the former number is mentioned in all succeeding dispatches, we may take this as the actual number and leave all surmises for the more curious. The auditor-general still mentions the number of families as ten. He estimates the probable expense of the journey at 852 pesos, with 145 more for the conductor. The latter must have a list of the families to present to the *alcaldes mayores* of the various districts through which they pass, together with a list of the beasts of burden and baggage, to serve as bases for providing for the needs of the company. These lists the conductor must deliver to Colonel Aguirre, the governor of Coahuila. The *alcaldes mayores* must also send to Aguirre an account of the provisions they have furnished. These officers would be duly notified to fulfill their part. The conductor was empowered

⁸Francisco Manuel de Cobanubias, Sept. 9, 1730, *Escrivano Público*.
Historia 84

to ask for additional aid, if his march should be delayed beyond the twenty-nine days assigned for its completion.⁹

Having the reports of the notary public and of the auditor-general before him, the Marquis de Casa Fuerte, at that time the viceroy of New Spain, proceeded to issue the necessary decrees for conveying the colonists to San Antonio de Bexar. First he ordered the alcalde mayor of Guantitlan to deliver the persons mentioned in the list of the notary public to Francisco Dubal, after noting any change in the number on account of births or deaths. He was also to make an inventory of the various belongings of the families and send it to the viceroy to be forwarded to Colonel Aguirre. The march is to begin on the 15th of November.¹⁰ The marquis next issued a decree to the governors of Nueva Leon and Coahuila, to the alcaldes mayores, and to the justizias along the route of march, to render such aid as the colonists might need.¹¹ In this decree he mentions the number of families as fifteen. This number appears in all the following decrees.

With the colonists safely on the road to Saltillo the viceroy sends orders to Colonel Aguirre to provide for the next stage of the route. Aguirre is to send an escort of ten soldiers from Saltillo to the Rio Grande (which in this decree is called both the "Rio Grande" and the "Rio del Norte"). The viceroy gives the list of twenty-three daily journeys, and advises a two days' rest at the Presidio del Norte. This, with certain provisions for saints' days, results in an estimate of thirty-three days for the completion of the journey. The daily allowance for colonists and conductor will make the cost of provisions to be furnished for this part of the journey amount to 1089 pesos. The captain of the Presidio del Norte will provide the escort from that point to San Antonio. Aguirre, in addition to the allowance for provisions, is to furnish each family with a yoke of oxen and necessary implements for cultivating the soil, as well as a metate for grinding corn. The total expense of food for these colonists from Guantitlan to San Antonio de Bexar was estimated at about \$2000. If one considers all the expense necessary to pro-

⁹ Report of Don Juan de Oliban Renollede, Auditor General, Oct. 30, 1730. *Historia* 84.

¹⁰ Decree of Casa Fuerte, Nov. 8, 1730. *Historia* 84.

¹¹ *Ibid.*, Nov. 28, 1730

vide each family with oxen and farming implements, and adds this to the probable cost of the voyage from the Canary Islands to Guantitlan, he wonders where later writers get their authority for the statement that the total cost of transportation of these colonists was between seventy and eighty thousand dollars.¹²

Governor Aguirre was also to take an inventory of the possessions of the colonists, to see if any of the articles entrusted to them at Guantitlan were missing. The conductor must give a detailed account of his journey, together with all vouchers for provisions and goods furnished. These vouchers, reports, and inventories are to be sent to the royal treasury at Mexico for payment.¹³ By this system of mutual checks the accounts of the expedition were to be kept straight and the opportunities for speculation minimized.

Having thus arranged for the safe conduct of the families to San Antonio de Bexar, the viceroy next had to send orders to the governor of Texas, or in his absence to the captain of the presidio of San Antonio de Bexar, to prepare for their coming. In the first place, the governor is to aid the colonists with provisions to the extent of four reales per day, and to continue this aid for one year after their arrival, at the same prices that provisions are furnished to the soldiers. It is interesting to note how different this course was from that pursued by the English government toward its colonists. In addition, at the proper season, the governor is to provide seeds for planting, and to see that the families attend to the planting at the proper time, in order to have provisions for the second year. Perhaps this second paternalistic requirement was made necessary by the first, and from what we know of the character of these colonists, as shown later, was not needless. The governor is to take the advice of such experienced persons as may be necessary, and is to send an account to the royal treasury.¹⁴

The next decree may have been necessary from a Spanish standpoint, but to us it seems almost useless. The governor was to make

¹² Bancroft, *North Mexican States and Texas*, I, 652, quoting Morfi, says: "This villa cost the king 80,000 pesos, and today, if sold, would not bring 80 pesos."

¹³ Marquis de Casa Fuerte to Colonel Matias de Aguirre, Nov. 28, 1730.

¹⁴ Marquis de Casa Fuerte to Don Antonio Bustillo y Bustamente, Nov. 28, 1730. *Historia* 84.

a new list of the persons composing the fifteen families, in order to confer upon them, as the first settlers, and upon their descendants, the title of "*Hijos Dalgos*," or, as we more commonly term it, "Hidalgos." This was a regular honor bestowed upon the first settlers of a new city in the colonies,¹⁵ and seems to have been the survival of a similar custom in Spain during the period of the Moorish wars. The subsequent history of the villa seems to show that this unaccustomed honor did not sit well upon the new recipients. The governor was to select from the heads of these families, six men for the more substantial honor of *regidores*, as well as an *alguacil*, a secretary of the *concejo*, and a major domo to care for the goods and possessions of this "republic."¹⁶ The above officers should select two *alcaldes* for the administration of justice. The governor was to attend the first meeting, to administer oaths and inaugurate the new government. As this was the first political population of Texas, it should be given the title of city and should be the capital of the province. The viceroy reserves to His Majesty, however, the privilege of confirming this decree and of giving the illustrious municipality a coat of arms, should that be his royal pleasure.¹⁷ Evidently the viceroy intended that his new municipality should have a system of paper government as complete, in its way, as the "Fundamental Constitutions" of John Locke. His carefully wrought plans were to apply with even less success to the mesquite plains of Texas, than those of the British philosopher to the pine forests of the Carolinas. With reference to making the new settlement the capital of the province, the exertions of the governor do not seem to have been especially vigorous, for it was not until 1734, under the rule of his successor, that the capital was removed from the presidio of Pilar to San Antonio.¹⁸

In the next decree the governor is to provide temporary lodgings for the colonists and pasturage for their animals, taking care to keep the latter separated from those of the soldiers. He is to instruct the new arrivals how to look after their own animals, to prevent them from straying off, or from being stolen by the Indians.

¹⁵ Recopilacion de Indias, Lib. 9, Tít. 6, Ley 6.

¹⁶ This same word is often used in referring to a Spanish municipality.

¹⁷ Viceroy to Governor of Texas, same date.

¹⁸ Bancroft: North Mexican States and Texas, I, 637.

The governor is to continue his paternal care in making sure that no one takes undue advantage of the newcomers. He is to take notice that the colonists have left Guantitlan on the 15th of November, that it will take them about thirty-six days to reach Saltillo and about thirty-three more to reach San Antonio de Bexar, and, accordingly, he has no time to lose in making due provision for them. The governor is also to check up the lists of the conductor, as Colonel Aguirre has done at Saltillo.¹⁹

At this point it may be well to note, with reference to the time consumed on the journey, that a document quoted by Mr. William Corner in his book, "San Antonio de Bexar,"²⁰ says that the colonists appeared before a notary public of Saltillo January 31, 1731, to certify to the new lists and inventories made out by Colonel Aguirre. Evidently the conductor had found it necessary to make use of his privilege to extend the time of the march from Guantitlan to Saltillo. At this rate the colonists could not have reached San Antonio de Bexar before the middle of March, 1731. In this document the number of families is mentioned as sixteen.

The next duty of the governor is to "lay out" the new city. In company with the necessary number of men of discretion, he is to select a site on the western bank of the San Antonio, within a musket shot of the presidio and to the northeast of it, on a slightly elevated plot of ground, large enough to sustain a considerable population. He is to select a spot with a certain supply of pure air and water. The western bank of the river is to be chosen, because the colonists can use temporarily the missions of San José and San Antonio, without fording the river. After selecting the spot, the governor and his associates shall proceed to lay out the streets, squares, plaza, and sites for the church, house of the curate, the public or royal house, and the remaining houses which appear on the accompanying map.²¹ When one reads that the governor was to lay out the streets "straight, according to the map," he wonders, in considering the present state of the older portion of the city, what happened to that map on its journey from the viceroy to the gov-

¹⁹ Viceroy to Governor of Texas, same date.

²⁰ Page 127.

²¹ Unfortunately the map does not accompany the decree at the present time.

error. Perhaps it is only another case of the discrepancy between plan and execution common to Spanish America.

The territory of the new municipality is to be divided as follows: The residence portion, with the church as a center, is to consist of a square of 1093 varas.²² This square is to be divided into 144 blocks, each 240 feet square, and separated from its neighbors by a street forty feet wide. Each family is to be given a block for a residence lot. It is supposed that the above number of blocks will be sufficient for the probable population of the new municipality for several years to come. Each family is to line the borders of its building lot with trees, and to erect as commodious a house as possible, with a patio, corral, and all necessary buildings. The leading families were to be assigned lands about the plaza, but in other respects the assignments and buildings erected were to be as nearly equal as possible. Care should be taken to provide for the cleanliness of the premises, and that the directions of houses and streets should coincide.

Outside the residence portion came the common pasture lands, extending on every side 1093 varas. A fifth part of this land was to be set aside "*para propios de la Republica*." From the limits of this pasture land another measurement of 2186 varas in every direction, included the land destined for labors. In the later colonization law of the Mexican Republic,²³ a labor consisted of a tract of land one thousand varas square, and it is probable that the labors mentioned above were about the same size. Each family was to receive a labor, together with equal privileges of using the water from the arroyo,²⁴ or from the San Antonio. A fifth portion of this land was also to be reserved for public use, and the remainder to be given to future colonists. The different families were to be given a title for their lands in the name of His Majesty, in accordance with a "law of the Indies."²⁵ This decree was to be deposited in the house of the concejo, as part of the record for land titles.

The governor was to furnish sheep, goats and cattle for each family and render account of these, together with everything else

²² A vara is about 33 inches.

²³ Laws of Constituent Congress of Coahuila and Texas, No. 16, Art. 11.

²⁴ Probably San Pedro Creek.

²⁵ Recopilacion de Indias, Lib. 9, Tít. 12, Ley 9.

provided for the colonists. He was to attend to the matter with the zeal and energy that its great importance warranted, with the certainty that a favorable beginning would largely determine the subsequent ease and well-being of the colonists.²⁶

Having made due provision for a reasonable amount of this world's goods for the colonists, the viceroy finally turns his attention to the spiritual needs of his new municipality. He issues a decree to the Bishop of Guadalajara, to send a resident of the oratory of San Carlos, a zealous person, to administer the sacraments and perform the other religious duties for the inhabitants of Texas' new capital. The person selected is to act both as curate and as ecclesiastic vicar judge. He is to be given a salary of 400 pesos, and his pay is to begin on the day he departs for his new field. He is also to hasten the erection of the parish church.²⁷ It is interesting to note that the corner-stone of this edifice was not laid until 1744.

With this decree the viceroy ended his hard day's work. It certainly seemed that he had taken every caution that human ingenuity could devise for the successful founding and the steady growth of this distant outpost of Spanish civilization. But the viceroy lived in the days when the Spanish monarchy had degenerated, and was working against an almost insuperable obstacle to rapid growth, in the person of the fierce Texas Indian, and with most inefficient means in "the fifteen families, consisting of fifty-six persons, come from the Canary Islands, for the purpose of colonizing the Presidio of San Antonio de Bexar." One has but to read the later criticisms of Father Morfi²⁸ to realize the futility of all paternal legislation, and especially of this experiment on the frontier of Texas. But the experiment, unsuccessful as it was in its realization, resulted in the founding of the first Texas municipality.

²⁶ Viceroy to Governor of Texas, same date.

²⁷ Viceroy to Sr. Dr. Don Nicholas Carlos Gomes de Cervantes, Nov. 28, 1730.

²⁸ *Memorias para la Historia de Texas.* MS.

LIFE OF GERMAN PIONEERS IN EARLY TEXAS.

CAROLINE VON HINUEBER (BORN ERNST).

[This narrative has been prepared for publication in THE QUARTERLY by Rudolph Kleberg, Jr. See QUARTERLY for April, 1898, p. 297, and for October, 1898, p. 170.—EDITOR QUARTERLY.]

When my father came to Texas, I was a child of eleven or twelve years. My father's name was Friedrich Ernst. He was by profession a book-keeper, and emigrated from the duchy of Oldenburg. Shortly after landing in New York he fell in with Mr. Fordtran, a tanner and a countryman of his. A book by a Mr. Duhde, setting forth the advantages of the new State of Missouri, had come into their hands, and they determined to settle in that State. While in New Orleans, they heard that every settler who came to Texas with his family would receive a league and labor of land from the Mexican government. This information induced them to abandon their first intention.

We set sail for Texas in the schooner *Saltillo*, Captain Haskins. Just as we were ready to start, a flatboat with a party of Kentuckians and their dogs was hitched on to our vessel, the Kentuckians coming aboard and leaving their dogs behind on the flatboat. The poor animals met a grievous fate. Whenever the wind arose and the waves swept over the boat, they would howl and whine most piteously. One night the line parted, and we never saw them again.

We were almost as uncomfortable as the dogs. The boat was jammed with passengers and their luggage so that you could hardly find a place on the floor to lie down at night. I firmly believe that a strong wind would have drowned us all. In the bayou, the schooner often grounded, and the men had to take the anchor on shore and pull her off. We landed at Harrisburg, which consisted at that time of about five or six log houses, on the 3d of April, 1831. Captain Harris had a sawmill, and there was a store or two, I believe. Here we remained five weeks, while Fordtran went ahead of us and entered a league, where now stands the town of Industry.

While on our way to our new home, we stayed in San Felipe for several days at Whiteside Tavern. The courthouse was about a mile out of town, and here R. M. Williamson, who was the alcalde, had his office. I saw him several times while I was here, and remember how I wondered at his crutch and wooden leg. S. F. Austin was in Mexico at the time, and Sam Williams, his private secretary, gave my father a title to land which he had originally picked out for himself. My father had to kiss the Bible and promise, as soon as the priest should arrive, to become a Catholic. People were married by the alcalde, also, on the promise that they would have themselves reunited on the arrival of the priest. But no one ever became Catholic, though the priest, Father Muldoon, arrived promptly. The people of San Felipe made him drunk and sent him back home.

My father was the first German to come to Texas with his family. Hertzner, a tailor, and Grossmeyer, a young German, at Matagorda, both unmarried, were in Texas when my father came. There was also a Pennsylvanian, whom they called Dutch Henry, and a Dr. Adolph v. Zornow, had traveled through Texas, but did not stay long. My father wrote a letter to a friend, a Mr. Schwarz, in Oldenburg, which was published in the local newspaper. This brought a number of Oldenburgers and Münsterländers, with their families, to Texas in 1834.¹

¹[Robt. J. Kleberg, Sr., writes: "We had accidentally got hold of a letter written by a gentleman, who had emigrated some time before us from the Duchy of Oldenburg and who lived where now is Industry, Texas, Fritz Ernst, by name. In this letter he had described Texas, then a province of Mexico, in very glowing colors, mentioning also the advantages offered to immigrants by the Mexican government, namely, a league and labor for every man with a family and $\frac{1}{2}$ league for every single man. This letter caused us to change our first intention to go to one of the northern states and to choose Texas for our future home. At the time we left, hardly anything was known of Texas, except that my ideas and those of my party were formed by the above mentioned letter, in which Texas was described as a beautiful country, with enchanting scenery and delightful climate, similar to that of Italy, the most fruitful soil and republican government, with unbounded personal and political liberty, free from so many disadvantages and evils of old countries. Prussia, our former home, smarted at the time we left under a military despotism. We were enthusiastic lovers of republican institutions, full of romantic notions, and believed to find in Texas, before all other countries, the blessed land of our hopes." This is taken from notes written by him in 1876.—R. K., Jr.]

After we had lived on Fordtran's place for six months, we moved into our own house. This was a miserable little hut, covered with straw and having six sides, which were made out of moss. The roof was by no means water-proof, and we often held an umbrella over our bed when it rained at night, while the cows came and ate the moss. Of course, we suffered a great deal in the winter. My father had tried to build a chimney and fireplace out of logs and clay, but we were afraid to light a fire because of the extreme combustibility of our dwelling. So we had to shiver. Our shoes gave out, and we had to go barefoot in winter, for we did not know how to make moccasins. Our supply of clothes was also insufficient, and we had no spinning wheel, nor did we know how to spin and weave like the Americans. It was twenty-eight miles to San Felipe, and, besides, we had no money. When we could buy things, my first calico dress cost 50 cents per yard. No one can imagine what a degree of want there was of the merest necessities of life, and it is difficult for me now to understand how we managed to live and get along under the circumstances. Yet we did so in some way. We were really better supplied than our neighbors with household and farm utensils, but they knew better how to help themselves. Sutherland² used his razor for cutting kindling, killing pigs, and cutting leather for moccasins. My mother was once called to a neighbor's house, five miles from us, because one of the little children was very sick. My mother slept on a deer skin, without a pillow, on the floor. In the morning, the lady of the house poured water over my mother's hands and told her to dry her face on her bonnet. At first we had very little to eat. We ate nothing but corn bread at first. Later, we began to raise cow peas, and afterwards my father made a fine vegetable garden. My father always was a poor huntsman. At first, we grated our corn until my father hollowed out a log and we ground it, as in a mortar. We had no cooking-stove, of course, and baked our bread in the only skillet we possessed. The ripe corn was boiled until it was soft, then grated and baked. The nearest mill was thirty miles off.

As I have already said, the country was very thinly settled. Our three neighbors, Burnett, Dougherty, and Sutherland, lived in a radius of seven miles. San Felipe was twenty-eight miles off, and

² See next paragraph.

there were about two houses on the road thither. In consequence, there was no market for anything you could raise, except for cigars and tobacco, which my father was the first in Texas to put on the market. He sold them in San Felipe to a Frenchman, D'Orvanne,³ who had a store there, but this was several years afterwards.

We raised barely what we needed, and we kept it. Around San Felipe certainly it was different, and there were some beautiful farms in the vicinity.

Before the war, there was a school in Washington, taught by a Miss Trest, where the Daughertys sent their daughter, boarding her in the city. Of course, we did not patronize it.

We lived in our doorless and windowless six-cornered pavilion about three years.

When the war broke out, my father at first intended quietly to remain at his home. But the Mexicans had induced the Kickapoo Indians to revolt, and he was warned by Captains Lester, York, and Pettus against the savages. We then set out with the intention of crossing the Sabine and seeking safety in the States. When we arrived at the Brazos, we found so many people assembled at the ferry that it would have been three days before the one small ferry-boat could have carried us over the stream. The roads were almost impassable. So my father pitched his camp in the middle of the Brazos bottom near Brenham. Here we remained until after the Battle of San Jacinto.

Thirteen men with their families, mostly Münsterländers and Oldenburgers from Cummins Creek, were in our party. They were Amsler, Weppler, Captain Vrels, Bartels, Damke, Wolters, Piefer, Boehmen, Schneider, Kleekemp, Kasper, Heimann, Gründer, and Witte.

Some of the Germans fared ill on account of their tardy flight. Mrs. Goegens and her children were captured by the Indians and

³ [This man's full name was Alexander Bourgeois D'Orvanne. He afterwards played a prominent part in the founding of the German colonies of New Braunfels and Fredericksburg in 1843-46 by the *Mainzer Adelsverein*. See *Entwicklungsgeschichte der Deutschen Kolonie Friedrichsburg* by Robert Penniger, Fredericksburg, Texas, 1896. Mrs. Rosa Kleberg tells me that her party was very hospitably entertained by him when they were on their way from Harrisburg to their farm at Cat Spring in 1835. He had a fine general mercantile business. He impressed her as a very estimable gentleman.—R. K., Jr.]

taken to the border of Texas, where American traders ransomed the lady, but had not sufficient money to purchase the children. These remained with the Indians. The Mexicans captured Stoehlke and intended to hang him. Upon his using the name of Jesus Christ, they released him. Kaspar Simon was also made a prisoner, but released upon exhibiting his ignorance of the whereabouts of the Texan army.

After the war, times were hard. However, my father had buried a good many things and had in this way succeeded in keeping them from the Mexicans. He had placed two posts a considerable distance apart, and had buried his treasures just midway between them. The posts had both been pulled out and holes dug near them, but our things had not been found. Our house and garden had been left unharmed, though those of our neighbors had been destroyed. The explanation of this is probably to be found in the fact that the Münsterländers, who were Catholics, had brought all their holy relics to our place and had set up several crosses in our garden.

Just as we had returned from the "runaway scrape," and had scarcely unhitched our horses, Vrels came running up and told us that a party of Mexicans had taken his horse. Ellison, York, and John Pettus, who had just returned from the army, galloped after the robbers, and, after York had killed one of them, recovered the horse.

We had plenty of corn and bacon. My brother and John Pettus brought back a few of our cattle from Gonzales. Before the war, there had been very little trouble; but afterwards, there was a good deal of fighting in our neighborhood, especially about election time.

A short time afterwards, my father began keeping a boarding-house and had a large building constructed for that purpose. He tore down the six-cornered pavilion, over the protest of my mother, who wanted to keep it as a sort of memento of former days. Many German immigrants accordingly came to our house. Nearly all managed very badly at first, using all their money before they had learned to accommodate themselves to their new surroundings.

Industry was founded about this time and named by Benninghoffer after a lively dispute. My father was justice of the peace for quite a time, and later was engaged in general merchandising.

I remember very well the coming of the German colonists who

founded New Braunfels and Fredericksburg. My brother Fritz accompanied Solms in the capacity of interpreter and guide. The prince had a considerable retinue of horsemen, dressed mostly like himself, after the fashion of German officers. Among the company were an architect, a cook, and a professional hunter (jaeger). Whenever they came to a good piece of road, the prince would say, "Now let us gallop," and then the whole party would charge down the prairie. The hunter was commanded to kill a deer, but did not succeed, and my brother rode out and killed one, causing much pleasure to the prince.

While on the same journey, the party stopped at a farmer's, who brought out watermelons and told them to help themselves. My brother cut a watermelon in two, took a piece, and went out into the yard to eat, whereupon one of the officers rebuked him severely, asking him how he could dare to eat when His Highness had not yet tasted.

When the prince was endeavoring to establish the Karlshafen (Indianola), and he and his party were making soundings, the boat grounded. The prince was in great distress and insisted that the only thing to do was to wait for the tide. My brother then took off his clothes, got out, and pushed the boat off the sandbank.

I also remember that the prince's cook came to my mother for information in regard to Texas dishes.

I lived in Industry until I married Louis von Roeder. Nearly all my time was spent in attending to our household, and I had little opportunity for traveling about. I was not in San Felipe after the war.

TWO LETTERS FROM A MIER PRISONER.

[The first of these two letters is in the Wilson Scrap-book, and is mentioned in the description given in *THE QUARTERLY* for October, 1897, pp. 132-3. The second came into the collection of the Association through the kindness of Mrs. W. G. Belding of Fort Worth and its possessor, Mrs. J. F. Miller of Gonzales. It was written to Col. A. Turner, the father of Mrs. Miller.—EDITOR QUARTERLY.]

Castle of Perota 22nd April 1844.

Dear Brother

At last addressing you from the confines of a Prison, contrary to what I ever anticipated but in character with the present condition of our Country in my former letters I gave you a history of our fight at Mier broke at the Salado &c notwithstanding our many sufferings on our march a distance of fifteen hundred miles many of us barefooted myself marched three hundred miles barefooted during the time there were three hail storms that in the wash the Hail lay ancle deep badly fed and almost naked at last brought up at this miserable place Perota the castle contain twenty six acres walls Eight feet thick of stone and cement twenty-five feet high heavy Lock and we chained by the leg this shows the improbability of escape tho sixteen of our men did dig under the wall and escape four retaken this place is situated in a vally the surrounding mountains covered with snow summer and winter upon the whole the most unpleasant climate I have yet visited the condition of most of our men have been Eleivated by their friends in the United States by sending them money as for myself sence the 25th December 42 I have been destitute of money not one cent to buy soap to wash my skin Cloth is out of the question we are all Lousy as pigs All comunication is stoped between Texas and this country which precludes all posibility of obtaining any relief from home I drew upon Alexander Spiers Brown & Co of New York for four hundred & twenty Eight dollars which they were due me my latter date 29th Dec. 43 No answer as yet Feby 23rd drew upon Bursides & Co Orleans as a matter of favour No answer here a prisoner without one cent an Epimdemic visited us

and reduced our nos one third then was the trying moment of my life fear came over me amongst our acquaintance Joseph A Cruz died about the first of Feby 44 Wm A Wallace is here a prisoner with me who at the same time suffered Marturdom with myself in the Hospital the eppidemic that prevailed affected the Head all was in a state of delirium he Wm A W was lashed hard and fast on his back with roaps which marks will show as long as he lives— We are required to perform the most menial service that ever white men did perform sweeping the streets gathering all the filth that may accumulate in baskets under the superintend of the vilest of convicts with seeming discretion to use the pole instead of the rod the application of which keeps every one up to the mark—

To myself I never have heard from my native country but once that was Govr McDowel to U. S. Consulate Black in favor of my friend Wm A W— Writing time after time farewell

WM. F. WILSON

P S leaving home I was a candidate for the sherifalty of Liberty County with an expectation of reaching home by the day we were taken prisoners making no provision for the safe keeping of my affects Send this to Mr Andrews Wallace and tender him my¹ for his interposition in our behalf

W F W

Republic of Mexico
Castle of Perota 29th July 1844

Dear Coln

Again I write you still believing that I canot be so far forgotten by you as not to answer my letters but attribute it perhaps to miscariages Since a prisoner I have written you four or five times & Mrs Turner once Coln Bowyer at least once per month Coln Hardin Coln Woods Major John D Andrews of Houston John B Johnson of San Philopy David White of Mobile and Osker Farish and as yet I have received nothing— we are in a most retched condition badly fed naked made to work like beasts of burthen Some time ago we were fed upon meet of so doubtful a character that it is yet a matter undecided whether it was dried Dog or Goat meat My impression is that it was dog from the cooks

¹Obliterated.

finding the foot of a dog to the end of a shank and it not differing in appearance or flavour from the Balance in our naked condition we suffer much from cold being fourteen thousand feet above the level of the sea and of course it snows very easy we are in sight of snow all the time except when locked up in the Vally wher we are situated it Rains at least once in twenty four Hours & frequently mixed with snow. this Castle contains twenty six acres of ground wals eight feet thick that it has not been heated by other than animal heat for the last five hundred years they at times have from one hundred to a thousand Prisoners of their own. having but a thin mat maid out of a flag and an oald Blanket we sleep upon the brick floor and it damp which we suffer much from Rheumatism Hours of work per day ten after the Bexher Prisoners left we were closely confined twenty Hours out of the 24 they finding it was injuring our health they maid a change for the better tho it was imposing more work the things who oversee us is the vilest of convicts with seeming discesion to exercise all the crualty over us thay may think proper in which for their amusement they inflict stripes & Blows in which we can have no redress at this time I feel it more my duty to write than formerly that I may keep you advised of all the movements so far as I can tho we are pretty much secluded from everything except insults & taunts. Mr B E Greens letter to W S Murphy United States charge d affairs to Texas as published in weekly news bearing date 17th June 1844 superseeds my entering into particulars as I otherwise would do this letter referred to is upon the subject of Invasion He leaves the number of troops indefinate the Officers in this Castle tell us sometimes that it is thirty Thousand & from that down to seventeen Thousand Thay also inform us that thay are to be supplied with a Navy from England & the same maned by Englishmen seamen again they tell us that the are to be furnished seventeen ships by Spain a number of the officers that guarded us have been ordered and on their way to Texas as published in the weekly News of Galveston Canalus is commander and chief but not so it is *Canalizo* Mormon his aid who speaks English very well told me a few days ago that he would start the first of August to Texas The most of the troops is in St. Lewis Petocia at this time— As to Federation or Revault in Mexico it was got up for the purpose of deluding Texas or throwing hir of hir guard so look out and be on the alert

I have a skeam in view but in case this should be overhalled It would operate against me but do urge the people to be prepared. I do not wish this to be published but give the news as much publicity as possable I recomend you arming both your sons and yourself well and the same to every Texian for all will have to bear a hand after reading this send it to Coln Bowyer as I wish him to get up the colt I got from Mr Hardin & have him Broak but neither main nor tail altered My respects to Mrs. Turner & famly Mrs. Bowyer & little Lewis reserving a part for yourself and Coln Bowyer.

WM. F. WILSON

A BELATED COLONIST.

[The two following letters from Alex. Thomson to Stephen F. Austin indicate some of the troubles experienced by colonists reaching Texas subsequent to the decree of April 6, 1830, the eleventh article of which forbade further immigration from the United States. The originals are in the collection of Col. Guy M. Bryan.—EDITOR QUARTERLY.]

TENOXTITLAN, NOV. 13th 1830.

Respected Sir,

I am unacquainted with you personally, yet situated as I am, I think it necessary, to address you, and apprise you of a considerable difficulty, that now exist in the settlement of your colony, and the others also, namely, the order from General Teran, to the Colo. at Nacogdoches to suffer no person to pass, unless they have a passport, I was not apprised of that order, and came there, I think on the 28 ultmo, the alcalde inform'd me when the families came into town I must collect them all together, and present them, I done so, then the Coll. sent for me, and inform'd me that he had the saturday before recd the above mentioned order and could not consistent with his order, let me pass, but as we were ignorant of the late law, and as we had compleatly complied with the Colonization Law, having our certificates legally arraged, by the proper authorities, he would venture to give five of us a permit to you, who he said was authorised to give us pasports; but the families must remain until our return, we had traveled better than 8 weeks, had spent a great deal of money, and was much fatiuged, we could not feel willing to remain in that part of the country on expences so long, we therefore came round, which caus'd us to loose $2\frac{1}{2}$ days travel, we are now at the barracks, at Mr. Williams, that is the families. We arrived there last night, To-day I came up to the new garrison to see the commander here he says that he has recd the same order, and advises us to remain where we are, until he receives further orders in answer to his letter that he had writen after Majr Robertson had inform'd him that I was on the road, which answer he expected would arrive in four days, mean-while he gave us permission to explore the country, which we intend to do immediately—

Coll. Thorn has sent you a letter by me on the subject, We, him & myself think it advisable for you to have an agent appointed in Nacogdoches, he says he is willing to act for you if you wish him, but he expects to start in a day or two for New Orleans and be absent two months, there ought to be some person there authorised immediately, for since I left there, I have been informed of two more families that have been stoped, and detain'd,— I have been particular in giving the particulars of my detention, to you, in order that, you may have a clear view of the impediment, emigrants will meet in coming to the colonies— So soon as I can, I expect to see you, but cannot for a few days,—Majr. Robertson has inform'd you that I am interested in the settlement of this colony,—

Respectfully your most

Obt servant

ALEXANDER THOMSON.

TEXAS, AUSTIN'S COLONY, April 9th 1831

Dr. Sir,

I am sorry to be compelled to trouble you with a few lines, but necessity forces me to do it, I arrived with my own, and eight more families, on the 2nd Inst. at Harrisburgh, at which place I learn'd that, the families that I had brought out Last fall were ordered below the St. Antonio road, and that they had all mov'd down, the most of them to Mr. Milligans, I immediately went to St. Phillippi, to know the particulars, while there an order arrived, that all the families and myself, should return, to the, U. S. I at first concluded to go immediately but all with whom I convers'd at St. Phillipi, advised me to wait, and petition for privilege to remain in this colony, and become a settler here, I have arranged all my business in the U. S. and came with view to become a permanent resident in this country, and has sacrificed much, and underwent a great deal of fatigue, and trouble, to get here, if we have to return, it will break us all pretty well— I anticipated no such difficulties, or I never should have engaged in the business, but remain'd where I was well settled in Tennessee—

As I believe it is in your power to do more with the government, and with Genl. Teran, than any one else, and believing that you are dispos'd to be friendly toward us, I now take the liberty to request you, to interceed for us in any way your discretion, may point out,

and that as soon as you can, for I will not be able to know what to do, until I hear from you, If I am obliged to return, the sooner I know it the better, or if I am permitted to remain, I wish to be trying to settle myself, if I can remain, I wish to settle in the uper part of your colony—

Any attention paid to my situation by you, will be gratefully acknowledged, now is the time, sir, for you to do me, perhaps a greater kindness, than you may ever have an opportunity to do me again—

Your Most Obedent Sevt.

ALEXR. THOMSON.

N. B. until I hear my destiny, I expect to reside in the settlement of Mr. Milligan.

BOOK NOTICES AND REVIEWS.

The paper of Mr. Bugbee on *Slavery in Early Texas*, published in two parts, appearing respectively in the September and December numbers of *Political Science Quarterly*, is an excellent piece of historical work. One of its most important features is the argument against the assumption made by certain historians such as von Holst in supposing that the law of July 13, 1824, forbade the further introduction of slaves into Texas. Another is the evidence offered that the exception of Texas from Guerrero's decree of 1829 abolishing slavery in Mexico was officially promulgated. The article is based largely upon material hitherto unpublished, and in fact unused, and constitutes a very satisfactory introduction to a most important question.

Prominent Women of Texas, by Elizabeth Brooks, "manufactured" by the Warner Company, Akron, Ohio, is a compilation of sketches of about one hundred and fifty well known women of the State. Not claiming the list to be complete, the author states that "many distinguished in their several spheres have been necessarily omitted."

Under the title of "Wives of Texas Presidents" appear the names of Mrs. Sam Houston and Mrs. Anson Jones; while Mrs. Rusk, Mrs. Lamar, Mrs. Fannin, Mrs. Sherman, and Mrs. Wharton are classed as "Wives of Military Heroes." All the other names are arranged under the following titles: Pioneers, In the Realms of Art, Well Known Vocalists, Prominent Authors, Journalism in Texas, Educators, Physicians, Temperance Leaders, Dramatic, Wives of Prominent Men, The Uncrowned Queen of the West, Representative Women, and Well Known in Social Life.

The sketches are short, but contain a deal of matter well worth preserving in print.

The Laws of Texas. Compiled and arranged by H. P. N. Gammel, of Austin. With an Introduction by C. W. Raines. Austin: The Gammel Book Company. 1898. Vol. I, pp. vii + 1527; Vol. II, pp. 1729; Vol. III, pp. 1586.

This series contains really more than the title indicates, as a glance at the contents of the first volume shows. They are as follows: Austin's Colonization Law and Contract; Mexican Constitution of 1824; Federal Colonization Laws; Colonization Laws of Coahuila and Texas; Colonization Law of the State of Tamaulipas; Fredonian Declaration of Independence; Laws and Decrees, with Constitution of Coahuila and Texas; San Felipe Convention; Journals of the Consultation; Proceedings of the General Council; Goliad Declaration of Independence; Journals of the Convention at Washington; Ordinances and Decrees of the Consultation; Declaration of Independence; Constitution of the Republic; Laws, General and Special, of the Republic; Annexation Resolution of the United States; Ratification of the same by Texas; Constitution of the United States; Constitution of the State of Texas, with all the laws, General and Special, passed thereunder, including Ordinances, Decrees, and Resolutions, with the Constitution of the Confederate States and the Reconstruction Acts of Congress.

The second volume contains the Laws of the Republic and State of Texas from 1838 to 1846, inclusive, and the third volume, the laws of the State from 1846 to 1854, inclusive. The Constitution of 1845 is incorporated in its proper place.

The Special as well as the General Laws are inserted in full—in fact nothing is omitted from the current publications of the laws as they were enacted from time to time.

It would be difficult to estimate the value of this great repository of jurisprudence and history. The services rendered the legal profession by the Messrs. Sayles in the compilation of their *Early Laws* has been of incalculable benefit to the bar, but this puts us in possession of a vast amount of original data which for many years has been practically out of print and inaccessible. The student of political science is here afforded the material for studying the true philosophy of the foundations of our political system, the incongruities of Spanish-American methods in experiments toward popular government, the striking contrasts between two antagonistic civilizations, and the virtues and defects in each. The

constitutions of Mexico and of Coahuila and Texas, and the crude forms of legislation, both national and state, contained in the first volume of this series present an object lesson in history without which much of what we have heretofore obtained at second hand, and very imperfectly, would be of little value. The original sources of many private rights long since buried in oblivion are here brought to light, and in this aspect the series is of immense value to all classes of people. In spite of constitutional precautions, Texas, especially in her earlier history, was very prolific in special legislation, and numerous rights have grown up from various provisions of the laws, long since obsolete and out of print.

We have here an encyclopaedia of Texas law and political history in convenient form, adapted to use in private as well as in public libraries. The magnitude of the undertaking is such as to preclude the idea of a speculative enterprise on the part of the publisher, and it is hoped that the real merit of the work may so commend itself to the intelligence and patriotism, as well as to the practical necessities of our State, as to insure remuneration for the great outlay involved. The price of the entire series, when completed, is to be \$100, or about one-fifth the price of a set of supreme court decisions. The comparative value of a complete compendium of statutory law and a compendium of our jurisprudence as contained in the reports of the decisions of our higher courts, can be appreciated with little reflection. Neither is complete without the other; hence it may be seen that this series is comparatively cheap, and especially so when it is considered that a large proportion of the matter is inaccessible, except in these volumes.

The compilation claims to be "an exact reprint of the originals or copies, *verbatim et literatim*." The Introduction by Judge Raines gives a summary of the matter to be contained in the entire series. The volumes are to appear successively at intervals of two months until the ten are issued.

Texas lawyers and students of law and history will wish Mr. Gammel abundant success in his gigantic undertaking.

Z. T. FULMORE.

NOTES AND FRAGMENTS.

“LYNCHBURG” FOR HARRISBURG.—In the paper by Governor Roberts in the October *QUARTERLY* on the capitals of Texas, I notice he substitutes Lynchburg for Harrisburg. This was doubtless a slip of the pen, for I have never heard that the Cabinet was at any time domiciled at the former place, while its members were for nearly a month at the residence of my grandmother at Harrisburg.

ADÈLE B. LOOSCAN.

PADRE MULDOON’S TOAST.—Among the papers of Col. Guy M. Bryan is the following toast—apparently the original—offered by Padre Muldoon at a banquet given at Anahuac, January 1, 1832:

May Plough and Harrow, Spade and Fack,

Remain the Arms of Anahuac:

So that her rich and boundless plains

May yearly yield all sorts of Grains.

May all religious discord fall,

And friendship be the Creed of all.

With tolerance your Pastor views

All sects of Christians, Turks, and Jews.

I now demand three rousing cheers—

Great Austin’s health and Pioneers.

THE CAPITALS OF TEXAS.—A resolution was offered in the second congress by Thomas J. Rusk, proposing a committee of both houses to inquire into the propriety of selecting a site upon which to locate permanently a seat of government. It was adopted, and Messrs. Rusk, Burleson, and Menefee were appointed. They reported in favor of the proposition, and recommended that “five commissioners should be chosen by vote of both Houses, whose duty it shall be to select such site, and that they should receive such propositions for the sale of lands as may be made to them, and to

make conditional contracts, subject to ratification or rejection by this Congress, and that they report by the 15th of November, and in making selections they be confined to the section of country between the Trinity and Guadalupe rivers, and that they select no place over twenty miles north of the upper San Antonio road, nor south of a direct line running from the Trinity and Guadalupe crossing the Brazos at Fort Bend."

By joint vote of the houses five commissioners were selected. They were Messrs. Greer, McGehee, Burton, Sherlock, and Chriesman.¹

Upon the subsequent vote of both houses in choosing the site, Eblin's League (the adjoining league to Colonel Moore's, on which LaGrange is situated) was put in nomination, and upon the second ballot received a majority of all the votes.

It may be of some interest to know the names of the places nominated in the contest. Besides Eblin's League, there were Nashville, Bastrop, Black's Place, San Felipe de Austin, Nacogdoches, Groce's Retreat, Comanche—not the town of that name at present—and Richmond.²

President Houston vetoed this bill, so momentous to the interest of Fayette County, upon the ground that "the law fixing temporarily the seat of government" provided "that it shall be established at the town of Houston until the end of the session, 1840, which clearly required "that at least two elections must take place for members of the house of representatives, and two-thirds of the senators will be renewed previous to that time." "Many changes," he argued, "must take place in the population and condition of Texas previous to the year 1840," and the act contemplated "a larger expenditure of the public treasure than the Executive would be willing to see subtracted from the treasury at this time."³

These seemed good and sufficient reasons. What especial motive the house and Senate had for pushing the question further, is not expressed in the resolutions upon the question which followed.

May 22d the veto message was received, the bill was taken up again, and the question put,

¹ House Journal, Second Congress, pp. 10, 38-9, 62-3.

² House Journal, Second Congress, Adjourned Session, pp. 97-8.

³ *Ibid.*, pp. 162-3.

"Shall the bill pass, notwithstanding the reasons of the President to the contrary?"

The vote stood 14 to 12, so the bill was lost, there not being a constitutional majority.⁴

It was the opinion frequently expressed by the old settlers that that if General Burleson had not been absent, Eblin's League would have been the seat of government, but I find his name among those who voted for the passage of the bill over the veto. Voting on the nomination of a place for the capital, he did not support Eblin's League until the second ballot, giving his first vote to Bastrop. He was absent when the vote to create the county of Colon was taken, the bill for which was also vetoed by President Houston directly after; and this probably gave rise to the notion I have mentioned.

In prospect of the seat of government being located upon Eblin's League, the people of the vicinity had selected the lot first settled by Professor Decherd, within the corporate limits of La Grange, as Capitol Hill, and looked with confident expectation to the outcome.

But the veto message came, and with results entirely unlooked for by the President; for a bill was subsequently passed by a constitutional majority, locating the future capital at Austin, or rather, the bill resulted in that.

Tradition says that the southern members urged the extension of the limits fixed by the bill, hoping to defeat it by exhibiting the imprudence of the effort, but to their utter astonishment it passed, placing the capital upon the outermost verge of civilization. Whatever outcome as to the development of the country may have been expected, this must at least be regarded as rather a daring act of legislation.

The prosperity to Fayette that would have followed the location of the capital on Eblin's League is easily understood.

JULIA LEE SINKS.

THE NAME ALAMO.—Even the casual observer notices that the mission of the Alamo is the only one of the Texas missions which

⁴ *Ibid.*, pp. 166-8.

bears a name not associated with sacred persons or things. San Juan, Concepcion, San José, San Francisco, and the rest may have called up the reverential respect of the friars in the mere pronunciation of the names, but there was nothing in plain Alamo,—the name of a tree and in no way connected with things holy,—to excite the veneration of churchman or to awe the more than half-savage convert. Indeed, the Alamo was not the official designation of the mission, and we may be sure that the friars never applied such a non-holy name to it. To them and to the church it was the Mission San Antonio de Valero; and Alamo is, of course, only a popular name which has by some means won favor until San Antonio de Valero has been almost forgotten.

What, then, is the origin of the name Alamo? Common report in San Antonio replies that once the grounds around the mission church were covered with a growth of cottonwoods,—*álamos*,—and that the name arose from this circumstance. Certainly this seems to be a sufficient explanation.

But there is another explanation which has been suggested by certain documents in the archives of Bexar relative to the history of the Alamo, and which, if it does not point to the real origin of the name, at least brings to light an interesting coincidence. We may, perhaps, safely assume that the mission was called San Antonio de Valero as long as the friars remained in charge of it; that is, until 1793, when it was secularized.¹ From 1793 to 1801, the buildings were unoccupied; in the latter year, the military force in Texas was increased by the addition of "la compañía Volante del Álamo de Parras," and this new company was quartered in the deserted mission.¹ It remained there till 1813,¹ when the Revolution caused the temporary abandonment of the mission. After the Revolution, the company returned to its old quarters, where it remained till at least late in the twenties.

In the reports of the commander of the Texas troops, this company was usually referred to as the "company of the Alamo," and no doubt this was the name by which it was popularly known. Was it not an easy step, then, to attach the name of the company to the abandoned mission where it was quartered? If, indeed, the cotton-

¹ Political Chief José Antonio Sancedo to Governor Gonzales, June 10, 1825.—Archives of Bexar.

wood grew on the mission grounds, this step was rendered all the more easy, and very probably the people soon forgot that the "company of the Alamo" brought its name along with it when it first came to San Antonio. We may even think of the average citizen, in the twenties, explaining to the stranger that the company of the Alamo was so called because it was quartered in the mission of that name. Explanatory traditions frequently arise in this manner.

In submitting this suggestion, I wish it emphasized that it is offered only as a possible explanation. The facts are not sufficiently conclusive to warrant positive statements. Of course, the hypothesis suggested above would be overturned by the discovery of a single instance in which the name Alamo was applied to the mission prior to 1801, the date of the arrival in San Antonio of the company of the Alamo of Parras. If such an instance should come under the observation of any reader of this note, I trust *THE QUARTERLY* will be informed.

LESTER G. BUGBEE.

QUESTIONS AND ANSWERS.

The School of Pedagogy of the University of Texas is desirous of obtaining information concerning the early schools of Texas. Personal reminiscence pertaining to education in this State, catalogues of schools and colleges, and pamphlets containing articles and addresses on educational topics will be thankfully received. Correspondence with a view to gathering up material for a history of education in Texas is earnestly invited. Address

W. S. SUTTON,
Professor of Pedagogy, University of Texas.

In answer to the question of Judge Raines in the October number of *THE QUARTERLY*, I will say that the municipal ordinances for the villa of Guerrero (1830), the villa of Goliad (1830), and the city of Leona Vicario (Saltillo) can be found in the Bexar Archives. Those of other Texas towns may be there also, although the task of finding them would be as uncertain as the traditional search for a needle in a haystack. The decrees for the founding of the villa of San Fernando are found in Volume 84, Seccion de Historia, Archivo General, Mexico. The petitions and decrees relating to the founding of the Pueblo of Nuestra Señora del Pilar de Bucareli, on the Trinity (afterwards removed to Nacogdoches), are found in Volume 51 of the same section. I. J. Cox.

AFFAIRS OF THE ASSOCIATION.

The index to Volume I of *THE QUARTERLY* has been prepared, but it has been thought best to defer the printing of it until the final number of Volume II appears. This will be the number for April, 1899. The index will be so printed that it can be detached and bound with Volume I by those members who have that volume still unbound.

The appearance of the editor's name in this number of *THE QUARTERLY* is no more than the announcement, by authority of the Publication Committee, of a fact which has, almost of necessity, existed from the time when the publication was first undertaken. The editorial office in this case, while demanding no little labor and care and involving a responsibility that is keenly felt, carries with it no pecuniary compensation. The editor's reward lies mainly in the hope that he is promoting the interests of his chosen work, of the Association, and of the State of Texas. He will strive to make *THE QUARTERLY* worthy of the Association and the State.

According to the policy adopted by the management of the Association, *THE QUARTERLY* has been sent free to the principal libraries of America, and this arrangement will continue until the second volume is complete, or until the next number has been issued. After that, such libraries as desire its continuance and have nothing to offer in the way of exchange, will be expected to subscribe.

In this connection, while there is no intention to advertise in this Department, it may not be amiss to say *THE QUARTERLY* has been well received, both within the State and beyond it. Many

kindly things are said of it in letters received from thoroughly competent critics, as well as in the newspapers and periodicals to which it is sent. These opinions it will be the constant effort of the management to justify.

The Faculty of the State Agricultural and Mechanical College has kindly sent for publication in *THE QUARTERLY* three rare and valuable Spanish MSS. obtained from the Ramirez collection. One of these may be looked for in the April number. It is the letter of Padre Manzanet, giving an account of the establishment of the first Texas mission, San Francisco de los Tejas. If arrangements can be made therefor without involving too great cost, the MS. will be given in fac simile. A translation by Miss Lilia M. Casis, instructor in French and Spanish in the University of Texas, will accompany it. The other two will appear in later issues.

The "Prison Journal" of Stephen F. Austin, published in this number by the courtesy of Col. Guy M. Bryan, is of especial interest as containing Austin's private statement of his views relative to the conscientiously conservative policy which he adopted in dealing with the Mexican government, and which was so strongly disapproved by some of the more impatient among the Colonists. Subsequent numbers of *THE QUARTERLY* will contain various important documents relative to the history of Austin's Colony. In the April number is to appear the diary of Moses Austin, covering the period of his journey in 1796-7 from Virginia to what has since become Missouri.

The Regents of the University have made an appropriation for the purpose of constructing a fire-proof vault, and the Association can now assure all who feel disposed to give it MSS. or any kind of valuable material that such gifts will be stored in a safe depository and carefully preserved. It is sincerely hoped that much matter

of historical importance now in private hands will be given to the Association to be kept where it will be at once more useful to students of history, and less liable to be lost or destroyed.

There has been thus far no definite policy determined upon by the Council as to a regular midwinter meeting. This meeting may be expected to become a feature of the work of the Association, but considerable difficulty has been experienced in finding a time that would appear to be convenient. It is probable that there will be a meeting called previous to the regular annual date of the Thursday following the third Wednesday in June. Meanwhile, the Recording Secretary will be glad to hear from those having papers to offer. When the time and place of meeting are determined, due notice will be given the members.

The University Record.

THE UNIVERSITY RECORD is a magazine published by the authority of the Board of Regents of the University of Texas. It is the only official organ of the institution, and will contain—

*A summary of Regent and Faculty legislation;
A record of University events;
Articles of special and general interest written by members
of the faculty, officers, alumni, and friends of the
institution.*

NUMBER 1, VOLUME 1, has just been issued, and contains—

*An article by President Winston on the Education of Women
in the University;
A reprint from the Atlantic Monthly of Professor Liddell's
article entitled "Botching Shakespere;"
A complete directory of the Faculty, officers, and students of
the entire University;
A review of the work of the University for the past two
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requirements, additions to Faculty, and indicating
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UNIVERSITY OF TEXAS

Session 1898-99.

The Session of 1898-99 opened in four departments as follows: Department of Literature, Science and Arts, at Austin, September 26, 1898; Department of Engineering, at Austin, September 26, 1898; Department of Law, at Austin, September 26, 1898; Department of Medicine, at Galveston, October 1, 1898.

Academic Department

Candidates for admission must not be less than 16 years old, and of good moral character. Students are admitted at any time during the session.

Graduates of approved High Schools are admitted without examination.

The first-honor graduate of each approved High School is not required to pay the entrance fees.

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CONTENTS.

DESCUBRIMIENTO DE LA BAHIA DEL ESPIRITU SANTO.....	Damian Manzanet
TRANSLATION: DISCOVERY OF THE BAY OF ESPIRITU SANTO.....	Lilia M. Casis
THE BATTLE OF GONZALES.....	Miles S. Bennet
BOOK REVIEWS AND NOTICES.	
NOTES AND FRAGMENTS.	
AFFAIRS OF THE ASSOCIATION.	

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CARTA DE DON DAMIAN MANZANET Á DON CARLOS DE SIGUENZA SOBRE EL DESCUBRIMIENTO DE LA BAHÍA DEL ESPÍRITU SANTO.

[The MS. here given in fac simile,¹ with the translation by Miss Casis, belongs to the Agricultural and Mechanical College of Texas, and has been kindly lent for publication by the authorities of that institution. It is of especial interest for its account of the founding of the mission San Francisco de los Tejas, the first established by the Spaniards in what is now Texas. Yoakum and others who have followed him are wrong in supposing that this mission was located near the ruins of the French settlement, Fort St. Louis, on the La Vaca. It was, in fact, far in the interior, not a great distance from the present town of Nacogdoches.

As to the history of the MS., nothing certain has been learned further than that it belonged to the collection of Ramirez, Maximilian's Secretary of State, and that President John G. James of the Agricultural and Mechanical College bought it in 1881 from Bernard Quaritch, London.

On the back of the MS. is the following:

A 30 dias, del mes de sepre año de 1709, a la madrugada, sucedió un terremoto, en el puerto de la Vera Cruz, de vientos en contrados, q se sumergieron y se hisieron pedasos, once, navios, y se caieron algunas casas, y aseguran se perdieron en esta rruina mas de Trecientos mill pesos.

¹Since the publication of the fac simile in April, 1899, the MS. has disappeared and the plates have been destroyed. New plates could not be made from the fac simile. The only practicable course in issuing this reprint seemed to be to transcribe the fac simile and present it in type. This has made it impossible to represent some orthographic peculiarities, but extreme care has been taken to ensure accuracy in transcription and printing.—EDITORS OF THE QUARTERLY, December, 1911.

This is in a different hand from the rest, and is, like the letter itself, undated.

The title given above does not appear in the MS.; it was that given in Quaritch's Catalogue. The size of the written page of the MS. is $6\frac{1}{2} \times 11\frac{3}{4}$ inches.—EDITOR QUARTERLY.]

Mui señor mio. Dⁿ Carlos de siguença y GonGora.

La relazion que Vmrd me pide del descubrimiento de la baya del Espiritu santo y Rio de los tejas es la siguiente=El año de mill seis çientos y ochenta y cinco y seis, dio orden el Ex^{mo} ss.^{or} Virey que era entonçes el ss.^{or} conde de paredes Marques de la lagua. al ss.^{or} Marques de s Miguel de aguayo el qual era actual Gou.^{or} del N.^{uo} Reyno de leon para que despachase una compañía de soldados de a cau.^o; por las costas del mar del norte que esta adelante de tanpico haçia el Rio brauo y de la Madalena. Y dho Gou.^{or}; ymbio çinquenta hombres y por cauo dellos al cappⁿ Alonso de leon. dho Cauo con sus Soldados llegaron a la costa del mar y siguiendo la costa, pasaron el rio brabo con arto trauajo. este rrio es mismo del paso del N.^{uo} Mex^{co} Y los Yndios a este mismo rrio le dan diferentes nombres. Porque unos le llaman Rio brauo Rio Grande rrio turbio este Rio en el N.^{uo} Mex^{co}. nunca se supo su origen. lo mas que llegaron alcançar fue q^e. salia de la gran quibira. esto deçian los yndios que de la thierra adentro benian al nuebo Mex^{co} bolbamos al deRoto que llebo el cappⁿ Alonso de leon y sus soldados. pasado ya el rrio brauo llegaron a otro rrio que llamaron el rrio Solo. este al entrar a la mar diçen haçe una laguna la qual no pudierom pasar y se bolbieron al N.^{uo} Reyno de leon sin hauer tenido notiçia alguna de la Vaia del espiritu ss.^{to} y menos de los frangeses que estaban poblados en dha Vaia; dho Gou.^{or} por orden de su Ex^a. Ymbio Segunda bez a dho descubrimiento de dha Vaia Y Ymbio dos compañías de soldados de a cau.^o; y fue por cauo de dhos soldados el dho Cappⁿ Alonso de leon y llegaron por segunda bez asta el dho rrio Solo, Y sim poder pasar mas adelante se bolbieron sin traer raçon alguna y bisto que en dos beçes que habian bajado a la costa del mar no habian tenido rraçon alguna la tubieron por cosa sin fundamento. Y asi fue porque no hiçieron mas caso ni dilijençia; a este tiempo yo bibia en la mission de la caldera de la probinçia de quaguila a la qual hauia ydo ya con ynttenzion de ber si podia desCubrir y ttener alg [una]

Noticia de la thierra adentro hacia el norte Y nordeste por las noticias q^e ttenia de una carta que para en mi poder la qual dieron en Madrid a nro P^e frai Antt^o. linaz la qual carta haze mençion de lo que l B,^{ta} Madre Maria de Jhs. de agreda comunico en su Combento al P^e, Custodio del nuevo Mex^{co}. fr Alonso de Benauides. y dize la B Madre como estubo muchas bezes al nuevo Mex^{co}. Y a la gran quibira y que saliendo de la gran Quibira para el oriente estan los reynos de ticlas, theas, y caburcol Ya dize tambien que estos nombres no som propios de aquellos reynos sino parecidos. por estas noticias que io traya de Spaña y juntam^{te} benir al ministerio de la combersion de los ynfielos Pase y estube en las misiones de cohaguila y sauiedo que su Ex.^a hacia dilijencias para que se entrase a la tthierra adentro y se descubriese la baya del espiritu Santo y si hauia franceses procure con los Yndios que benian de la thierra adentro de preguntarles y sauer dellos si sabian en donde bibian unos hombres Blancos com^o españoles. y supe luego q^e los hauia y quien me lo dijo fue un Yndio que io tenia, que hauia poco lo hauia reduzido y aunq^e era jentil hauia rreconocido en el^l mucha berdad. entonçes le encargue mui de beras supiese con yndividualidad supiese en que pareje [*sic*] y que distançia y que jente habria. Y la thierra para yr si era andable. en esta ocasion llego otro yndio de la naz^{on} quem^s y me dijo como el hauia estado en las mismas casas De los franceses y que era mucha jente con mujeres. que tenian Muchas armas y unos arcabuzes mui grandes que eran las pieças de artilleria. y preguntandole que si sabia bien la thierra me dijo que si yo queria yr me llevaria sin rriesgo alguno. que alli habia tambien rrelijiosos como yo y que ia sembrauan Mayz y otras cosas—A este tiempo enttro por Cappⁿ. del Presidio de Cohaguila el capp.^{an} Alonso de leon el mismo que hauia ydo por cauo de las compañías del nuevo Reyno de leon, y antes de yr a su presidio fue a la mision de la caldera en donde yo bibia. y le hiçe sauer lo que me hauia pasado con los yndios tocante al descubrimiento de la bahia del espiritu santo y procure de animarlo para que fuesemos. dijome se [*sic*] Vbiese alguna señal ciertta para haisar a su Ex.^a, y que biese que era cosa çiertta Para poderse

empeñar. enttonçes llame al yndio nombrado Juan Capp^{an}. de la naçion pacpul, y le dije que dijera lo que se atrebia haçer para ber y sauer con çertidumbre que hauia jente blanca como españoles a la tthierra adentro. y dijo que en una Rancheria de yndios, jentiles q^e estaria como sesenta leguas estaba un ombre Blanco de los que hauia a la tthierra adentro, y que si yo queria el yria y lo sacaria para fuera de la rrencheria [*sic*]. luego lo despache Y para que mejor hiçiese el negoçio le di la rropa y caualllos q^e tube para que tubiese que dar a los Capp.^{nes} en donde estaua dho hombre que deçia. (que por las señas discurri ser françes) fue dho Cappⁿ De la naçion papul nombrado Juan y arrimado a la sierra Del sacat. sol que quiere deçir narizes de piedra, y en lengua de los ynDios de alla le llaman Axatscan que quiere deçir lo mismo. hallo Vna junta de muchas naçiones de yndios que se componia de las naciones Siguietes: Mescales==Yoricas==chomenes==Machomenes==sampanales==Paqua chiams==tilpayay==Apis esta sierra del sacatsol esta Veynte leguas adelante del Rio grande que es el q^e Biene del nortte. y se llama Rio del norte. y de la mision de san SalBador a dha sierra ay sesenta leguas y desde coaguila lo mismo dho Yndia Juanillo hallo al dho hombre de naçion françes y le dijo que yo le llamaua y lo saco asta otra Rancheria, y deço hauisados los yndios que no tubiesen miedo que yo queria yr hauerles; bolbio y me dijo como estaua el dho françes, y que sin reçelo alguno podiamos yr por el, hauiase al Cappⁿ Alonso de leon y fue con doçe hombres, y mui de paz y trujeron el dho françes rrayado como los yndios desnudo. y biejo el qual se llamaba Juan fran.^{co} de tal y diçe es natural de cheblie en la nueba françia== a este mismo françes le rremithio el cappⁿ Alonso de leon a su Ex.^a el ss^{or} conde de la moncloba, y en todas sus declaraciones siempre a mentido. despues de hauer determinado el ss^{or} conde de la moncloba el que se fuese al descubrimiento de la baya del espiritu santo, lleço a este Reyno por Virey El Ex.^{mo} ss^{or} Conde de Galbe, quien con ferbor a fomentado esta causa luego que entro en el Gouierno su Ex.^a Mando al cappⁿ Alonso de leon que prosiguiese la jornada para la Bahia del Espiritu Santo conforme lo tenia orden,^o su antegesor; y para dha jornada salieron de los presidios

de la Vizcaya quarenta hombres y del nuebo Reyno de leon, otros quarenta, formaronse de toda la jente tres compañías por cauo principal el cappⁿ Alonso de leon. Por sarjento Maior Nicolas de Medina Cappⁿ de una Compañia Thomas de la garça. Cappⁿ de otra lorencio de la garça y de la otra Alonso de leon. Alfrz R^l el capp^{an} fran^{co} martinez, que antes era sarjento rreformado por hauer ben.^{do} de servir su plaça en flandes==

Salimos de Cohaguila a Veynte y seis de março año de 1689 fuimos hasta el rrio del norte que en dha cohaguila llaman Rio grande, y nos fue guiando el dho yndio Juanillo. y llegados a dho rrio ymbie ha llamar el yndio que sabia la thierra y abia estado con los mismos françeses y se llama quemus. Por ser de la naçion de YnDios quemus. fuimos caminando para el nordeste y algunas beces quarta al este hasta llegar al rio de nra señora de guadalupe y en este paraje pregunte a dho yndio si faltaua mucho para llegar a las casas de los françeses (porque estando dellas distancja en un dia y noche pudiesemos algunos adelantarnos para rrejistrar la poblaçon sin ser sentidos) rrespondiome el yndio que habia de aquel rrio a dha poblaçon como 15 leguas== otro dia por la Mañana me dijo el cappⁿ Alonso de leon que ariamos para lograr sauer los françeses que habria y la prebenzion en su pueblo Vbo en esto pareçeres barios: Y el mio fue que supuesto llebabamos el yndio quemus que sabia muí bien la tthierra, que todos Mandasemos cantar una misa en aquel puesto aquella mañana a la Virgen ssantisima de guadalupe, (y llegando com bien a las casas de los françeses) otra a san Antt^o de padua; y todos binieron en ello com buena boluntad, y luego se canto la de la Virgen como a las nueve de la mañana. despues se dispuso el que guiando los dos yndios Juanillo el papul, y el quemus, fueron con nosotros 25 hombres asta llegar a rreconocer el pueblo de los françeses a la Madrugada y que los demas soldados con las rrequas Saliesen tras de nosotros y allando paraje bueno para parar parasen. Y que no saliesen de dho paraje hasta que bolbieramos, o, con orden del cappⁿ Alonso de leon

Al Salir nosottros se dio orden a los de rettaguardia q.^e biniesen largos y con cuidado de ber si salia algun Yndio. Y de salir que lo cojiesen, sin haçerle daño alguno, y que hauisasen; despues de hauer andado como quatro leguas los de rretaguardia bieron salir un yndio de un monte mui espeso y lo llamaron Y el indio fue para ellos sin rresistencia alguna. hauisaron nos, y Nos detubimos, lleo el yndio y los dos que lleuauamos le preguntaron si por alla hauia algunos hombres Blancos de los que bibian mas adelante, y dijo que los que hauia mas adelante que bibian en casas que ya no hauia por que hauia dos lunas que los yndios de la costa los hauian matado a ttodos menos algunos muchachos, que se hauian lleuado. y que el bibia en la rrancheria de los yndios Emet. y lauas, la qual rrancheria dijo estaua como dos leguas del rrumbo que lleuauamos, para la Bahia del espiritu santo: fuimos con el yndio a la Rancheria que dijo y llegamos a ella Como a las tres de la tarde: luego que los Yndios nos sintieron ganaron el monte y nos dejaron la rrancheria y los perros cargados que como Vhian no pudieron arrearlos a priesa. el mismo yndio que nos guiaba enttro en el montte y los llamo y dijo eramos amigos y que no tubiesen miedo. salieron algunos y entre ellos el cappⁿ los quales nos abraçauan y nos decian thechas; thechas; que quiere decir amigos, amigos, de los primeros q^e salieron salio un muchachon como de Veynte años el qual traya un manto de fraile Recoleta, y rreconociendo era manto de frayle le dimos una freçadilla y se la quite y dijeron dhos ~~dos~~ [sic] yndios como hauia dos dias, hauiam pasado dos frãseses con los yndios tejas aquella misma tarde pasamos adelante em pos de dhos frãseses Y al metterse el sol, llegamos a la rrancheria de los yndios toxos y toaa. Y nos dijeron que dhos frãseses hauiam pasado con dhos tejas y que no hauian querido parar con ellos. aquella noche dormimos junto a dha rrancheria; y a las ocho de la noche fueron a donde estauamos algunos yndios y entre ellos uno bestido al modo de loss frãseses y lleuaron algunos libros frãseses y una Blibia [sic] sacra. otro dia por la mañana salimos en demanda de dhos frãsesess por unos montes mui espesos y como a las dos de la tarde llegamos a unos Ranchitos de yndios de naçion Emet y preguntando por los frãseses nos enseñaron un yndio el qual acauaba de llegar Y era el que los

hauia guiado hasta el rrio de ssⁿ Marcos y queriendo pasar nos dijeron que no hauíamos de poder pasar dho rrio dijimos al yndio que los hauia lleuado que si queria llevarless um papel y que si traya rrepuesta le dariamos un cau^o; y que la Repuesta la hauia de llevar a las mismas casas en donde bibian los franceses el cappⁿ fran^{co} Martinez escribio la carta en lengua frangesa por sauerla bien. bolbimos a donde estaua el Real que estaba ginco leguas adelante del rrio de guadalupe y allamos hauia tres dias q^e la cauallada hauia dado estampida y despues de hauer Recojido muchos caualllos faltauan cinquenta y por buscarlos se hauia perdido un soldado, el qual estubo quatro dias perdido y en este tpo. hallo unos yndios que estauan desollando una gibola, y a la noche lo lleuaron a su rrancheria y le dieron a comer carne de gibola y lo q^e tubieron. otro dia llego un yndio de la misma rrancheria con un manojo de tauaco el qual hauia estado con nosotros y higo un gran parlamento a ttodos los que estauan en la rrancheria. este soldado perdido quando hallo los hindios de la gibola le hablabam por señas y entendio que le decian que les sacase lumbré o el de ber la carne que tenian lo ymferio o del miedo que tenia de berse perdido entre YnDios barbaros derramo la polbora que lleuaua en un frasco sobre el capote y al sacar lumbré caio una chispa sobre la polbora y le habraso todo un lado desde el pie asta la cauega: quando los Yndios supieron que nosotros estauamos en su tierra, arian quenta que aquel hombre perdido los demas de sus compañeros de fuerça lo hauian de buscar. otro dia, le trujeron su cauallo y como estaua tan quemado no se podia baler y los mismos yndios se lo ensillaron y lo subieron en el y por señas le dijeron que fuese con ellos y lo lleuaron Mui gerca de donde nosotros estauamos como dos tiros de arcabuz los yndios que lo lleuaron no quisieron llegar a nosotros, si le dijeron por señas se fuese señalandole donde estauamos nosotros que debidia una lomita y nosotros estauamos al pie de dha loma y al pie de la otra parte lo dejaron. llego a nosotros a las nueve oras del dia y fue para todos de mucho consuelo y nos lastimo berlo tan quemado—

Otro dia salimos para la poblaçon de los franceses y estando gerca della como tres leguas salieron como Veynte y ginco yndios; en esta ocasion el françes biejo que hiba con nosotros dio en deçir que la poblaçon de los franceses no estaua en donde nos lleuauan los dos ynDios, que nos guiaban. y este françes en el camino diferentes beçes Yntento por mano de un yndio que lleuaua de la

nacion Caua el que los dos yndios que nos guiaban nos dejasen o dijessen que era mui lejos Y que no hauiamoss de poder pasar los rrios que hauia en el camino Yo senti tanto el que se diese lugar de hablar a dho françes que me enoje; Y el cappⁿ Alonso de leon me dijo; p^e bamos por donde quisiere fuimos siguiendo las dos guias y a cosa de ttres leguas llegamoss a un arroyo de agua mui buena y los dos yndios me dijeron; a la orilla deste aRoyo por abajo estan las casas de los françeses. Y abra como ttres leguas, enttonçes el biejo françes bido que no tenia Remedio y que sin falta hauiamos de dar sobre la poblaçon enttonçes dijo (señor aora si mi sauer bien a bien en este chiquit [*sic*] Rio estar las casas) otro dia por la mañana salimos y a tres leguas hallamos la poblaçon de los françeses ha la orilla del arroyo que me hauian dicho los dos yndios quemss Y Juanillo el Papul, llegamos como a las onçe del dia hallamos seis casas no mui grandes echas de Palos y embarradas de lodo techadas de cueros de çibola. otra casa mas grande en donde çeuauan marranos un fuerte de Madera de la armaçon de un nauio que se perdio. tenia el fuerte un quarto bajo que seruia de capilla Para deçir misa tenia otros tres quartos bajos. arriba tenia un alto sobre los tres quartos que seruia de almagèn Y en el hallamos como seis cargas de hierro sin otros pedaços Desparramados Y açero= hallamos ocho pieças y tres pedreros de fierro Pequeñas, las maiores seran como de seis libras de bala, las pieças y um pedrero quedaron entterradas y dos pedreros trujo el cappⁿ. Alonso de leon, hauia mucha rruina de armas que los yndios habian quebrado de escopetas carabinas y alfanjes pero no dejaron los cañones. solo se hallo uno= hallamos dos cuerpos sin enterrar los quales enterre y puse una cruz en la sepoltura, hauia muchos libros rrotos y muchos marranoss muerttos tthenian dhos françeses un pedaço de thierra cercado com palos en Donde sembrauan maiz Poca cosa un almagigo de esparragos. hallamos lindas escarolas.= dho Puesto no tiene combeniençia alguna por thierra porque el agua buena esta mui lejos Y mas la leña; el agua del arroyo es mui salobre, tanto q en çinco dias que el R^l estuvo parado, enfermo toda la cauallada por el agua salobre= otro dia bajamos a Reconoger la Bahia del espiritu santo y la costeamos hasta llegar ha rreconocer la entrada del mar, a la entrada tiene en Medio

un mogote, Por toda la orilla de la Bahia aY Muchas lagunas, que para pasarlas, atascan mucho. aY Mucha çargamora mui gruesa y buena; y muchas çepas que Pareçen biñas, no ai arboleda ni agua dulce. los yndios haçem poços para beuer, Reconoçida la Bahia nos bolbimos al R^l que hauíamos dejado en la poblaçon, llegamos a medio Dia y estubimos aquella tarde y otro dia, doblaron los barejones de hierro para haçer terçios y traerlo= Allamos el Yndio con la rrepuesta de la carta que hauíamos escripto a los françeses y deçian que los aguardasemos que presto bendrian que otro françes estaua mas adelante al qual esperauan para benir todos juntos. al yndio se le dio el caualllo que le hauíamos mandado; el fuerte no quiso el cappⁿ Alonso de leon que se quemase; y quedo como estaua. otro dia salimos de buelta para el rrio de Guadalupe, y estando a medio camino biendo que los françeses no benian; el cappⁿ Alonso de leon con Veynte y çinco hombres fue a la rrancheria donde estauan y el R^l fue a parar al Rio de guadalupe en donde estubo arguardando tres dias= los françeses estauan en la rancheria de los yndios toaa con los tejas. binieron con el capp^{an} Alonso de leon hasta el rrio de guadalupe a donde llegaron a dos de Maio de ochenta y nueve= Binieron dos françeses desnudos con una gamuça y rrayadas las caras pechos y braços como los yndios y con ellos el Gou^{or} de los thejas con ocho yndios de los suyos, aquel dia Y noche yo procure todo lo pusible agasajar a dho Gouern^{or}. le di dos caualllos y la freçada en que yo dormia. no tube otra cosa que poderle dar y por uno de los françeses que tenia [?] en castilla le dije que fuesen xptianos y que lleuasen a su thierra saçerdotess para que los bautiçasen que de otra manera no se podian salbar sus almas y que si queria que yo hiria a su thierra. luego dijo dho Gou^{or}. que de mui buena gana me llebaria. dijele que bendria para llevar otros rrelijiosos como yo y que otro año para la siembra del maiz estaria halla. quedo dicho Gou^{or}. mui contento Y Yo mas, por ber el fruto que hauia de haçer en tantas almæss como ay en aquellas thierras que no conogen a Dios, otro dia era dia era dia [*sic*] de la cruz, tres de Mayo, despues de misa dho Gou^{or}; de los thejas se fue para su thierra; y nosotros para aca. llegamos a

choaguila Y el capp^{an} Alonso de leon despacho los dh,^{os} [?] franceses llamado el uno Juan archebepe de Bayona, y el otro santiago Grollette. y de Coaguila a Mex^{co}; el cappⁿ. fran^{co} Martinez los quales su ex^a, el ss^{or} Conde de Galbe mando bestir mui bien y con las Vrcas los rremithio a SPaña el mismo año de ochenta y nueve= todas estass notiçias no dejaron de causar mucha nobedad y armonia asi a Su Ex^a, como tambien a los demas señores de Mex^{co}. Y sobre ello Ubo diferentes juntas para ber lo que se podia haçer y determinar asi para q los franceses no se apoderasen y poblasen aquellas thierras como tambien para que entrasen ministros rrelijiosos= a este tiempo Su Ex.^a se siruio de mandarme llamar y rrogo a Nro Pe R^{mo} luzuriaga orDenase mi benida. yo bibia en la mision de san salvador del Valle de Santtiago de la probingia de Cohaguila, bine a queretaro Y llegue a mi Collejo de la santa cruz a Veyntte y quatro de octt^{re} de ochenta y nueve Y el dia de los finados sali para Mex^{co}= llegue al conuento de san Cosme el dia çinco de 9^{re}, y otro dia entro en Mex^{co}. N P R^{mo} frai Juan Capistrano que benia de SPaña Por Comisario Gen^l, desta N^{ua}, SPaña Pareçe que Dios nro señor no quiso que nro Pe luzuriaga mereçiese el que en su tiempo enttrase [*sic*] rrelijiosos de nro Pe, san fran^{co}. a los tejas porque siempre rrepugno que los rrelijiosos deste Santo Collejo entrasen a ynfieles Siendo el prinçipal ynstituto deste collejo el ser misioneros app,^{cos} de misiones entre ynfieles y fieles y en ocasion de que los R^{dos} Pes. frai Juan Bautista laçaro y el R^{do} Pe Predicador frai fran^{co}. esteues; entraron a la guasteca y en tamaulipa fundaron una mision de yndios jentiles y ya la mision congregada mas de treçientas familias; sin muchas que se yban juntando Y los yndios mui contentos y mui asistentes a la dotrina xptiana mando el R^{do} luzuriaga que se saliesen y dejasen dha miss^{on}. y Yndios sin mas motibo y rraçon que degir que aquellas thierras perttenegian a la custodia de tampico y que los ministros De aquella Custodia cuidarian de aquel puesto de Yndioss. los R^{dos} Padres obedegieron la orden del R^{mo} luçuriaga+ con artto dolor en sus coraçones; por ber que se hauian de perder aquellos pobres jentiles que con artto trauajo hauian agregado aquel puesto y lugar; despues de salir dhos Relijiosos y dejar a los yndios los Padres de aquella custodia no se acorDaron mas de tales yndios, y puestos quando los Padres Sse despидieron de los yndios fue

acçion mui lastimosa y lo que los yndios decían era para llorar diciendo que como los huiian engañado siendo saçerdotes y ministros de Dios. Pues les hauian dicho que les asisterian y enseñarian y bautigarian y que si la bida aquellos tenian en el campo bibiendo sin ley era mala; y con ella no se hauian de salbar que los padres tendrian la culpa pues los dejauan; y los hauian engañado. con estas y muchas rraçones se despidieron los Padres llorando por ber que quedaua aquella crei sim pastor y por otra parte herse compelidos de la obediencia.= en otra ocasion pidiendo lizençia el Prelado deste santo Collejo al R^{mo} luzuriaga Para entrar al nuebo Mex.^{co} y la nego Y no quiso y siempre llebo a mal el que se entrase a los ynfieles y quando llego la nueba de los tejas por ser descubrimiento que hiço ruido entonçes quiso disponer muchas cosas y que fuesen rrelijiosos de las probinçias.= pero Dios nro ss^{or} dispuso que quando yo llegue a Mex^{co} como tengo dicho fue en tiempo de otro Comisario gen^l; llegue a dha Ciu^d. bide a nro M R^{do} y ablamos de los thejas, le dije como era llamado de Su Ex^a. y del R^{mo}. luguriaga y me dijo bea a Su Ex^a, y despues nos beremos. bide a su Ex^a. con quien hable largamente de la Bahia del espiritu santto y de los tejas y desde luego dijo que fomentaria dha causa con todo esfuerço= Ademas de las notiçias que quando benimos de la Bahia del espiritu santo hauiamos traído y abia Ymformado al cappⁿ. Alonso de leon que hauia benido un yndio despues de hauer benido nosotros y decia que en los tejas hauia diez y ocho françeses, y que hauia echas casas que tenian ganados de cabras y obejas y que otros hauian Ydo a su tierra a ttraer mujeres y mas jente y no se yo que fin tendria el cappⁿ Alonso de leon para haçer el dho ynforme a su Ex^a. porque el yndio yo le bide y hable con el antes de ber al cappⁿ, leon. y a mi me dijo que benia de la tierra adentro y que le hauian dicho en los tejas handaban seis françeses como perdidos. Se ynformo tambien que benian un [*sic*] yndios tejas y que llegando mas aca del rrio ondo otros yndios les hauian salido y que hauian matado a dos dellos: y que los demas se hauian buelto a su thierra. esto me parece que se lo mandaron decir al françes biejo que bibia en Cuaguila; porque por autor desta nueba decían lo diçe Juan Y como el dho Juan en todas sus cosas a

mentido mintio tambien entonçes, porque enttre los yndios no se supo tal cosa y quando fuimos a los tejas ellos no supieron de tales muertes.= bolbamos al yntento. despues de estar yo en Mexico y aber hablado con su Ex^a, diferentes Veçes sobre el bolber a la Bahia del espiritu santo y entrar a los tejas determino Su Ex^a, llamar a junta Gen^l. para rresolber lo que se hauia de haçer: y suponiendo que el cappⁿ. Alonso de leon hauia ynformado que en los tejas hauia poblaçon de françeses y que en la Bahia del espiritu santo se hauian muerto los que hauia, no se Sabia si abria benido alguna embarcaçion françesa para poblar en dha Bahia; y juntamente el motibo que hauia de pedir los tejas ministros para su tierra= bisto en la junta gen^l, todos estos motiboss, Vbo diferentes pareçeres y al fin determino Su Ex^a, el que se fuese otra bez a rreconocer la Bahia del espiritu santo; anttecedente- emnte ya tenia el cappⁿ. Alonso de leon ynformado a su ex^a; todo lo que era neçesario para dha jornada: en suposiçion que se Vbiese de haçer: dettermino su ex^a; que el cappⁿ Alonso de leon fuese por cabo prinçipal y lleuase çiento y diez soldados: los Veynte De los presidios de la Vizcaia; los mas çercanos a coaguila; quarenta que se alistaron en sombrerete y Zacatecas, los demas del Saltillo y nuebo reyno de leon; çiento y çinquenta cargas de arina Duçien- tas bacas: quatroçientos caualllos: çinquenta escopetass largas= doçe quintales de polbora; doçe arrobas de balas: Y que se rregis- trase la Bahia del espiritu santo y se supiese si hauia quedado algunos françeses y de los que hauia, o si nuebamente hauian benido otros=y que se quemase el fuerte de madera que tenian echo los franceses que el dho Cappⁿ Alonso de leon desde la Bahia del espiritu Santo houisase al Gouvernador de los tejas si queria que entrasen en su thierra los ministros del santo euanjelio como hauia prometido el año antezedente al P^e frai Damian mazanet, y que si queria lleuasen y acompañasen a los rrelijiosos que fuesen con todo cuidado. que se despachase mandamiento de rruego y encargo al mui R^{do}. P^e. Comiss^o, Gen^l. Para que de los rrelijiosos del santo collejio de la cruz De queretaro le diese al P^e frai Damian Maçanet los que fueren de su satisfaçion= y que dho P^e, biese que rrelijiosos serian neçesarios por entonçes y que junta- mente se le diese todo lo neçesario Para dha jornada

Y por Hallarme presentte a dha Junta Gen^l, dije que para los tejas lleuaria tres rrelijiosos, y yo quattro; para la mision de San Saluador que esta en el Camino, dos que serian seis religiosos, que Ymbiaria el collejio, y que si los tejas abraçauan la fee Ymbiaria el dho collejia los rrelijiosos neçesarios; esta fue la determinacion de la junta Gen^l,= Despues me dijo Su ex^a; que hiciese Vna memoria de lo que era neçesario para lleuar a lo qual rrespondi que por entonçes no queria mas que bino para las misas, y un ostiario y zera. que lo demas como ornamentos y otras cosas yo lo buscaria;= Se dispuso la jorn,^{da} para despues de pasqua de nauidad; luego despues de la pasqua despacho Su Ex^a; al cappⁿ fran^{co} martinez con veynte mulas cargadas de bino, cera y lo demas. rropa Para repartir a los yndios con seis cargas de ttuaco y lo aguarde en el Collejio de la santa cruz de querettaro; con los rrelijiosos q fueron conmigo el P^e Predicador fr Miguel fonte Cuberta el P^e Predicador fri. fran^{co} de Jesus Maria el P^e Predicador fri. Antt^o. Perea el P^e, Predicador fri. fran^{co} hidalgo el P^e Predicador fri. Antt^o, bordoy= los que quedaron en la mision de san Salbador fueron los p,^{es} frai Antt^o Perea y frai fran^{co} hidalgo= Salimos de Cohaguila para los tejas el terçero dia de pasqua de rresurezion a Veynte y ocho de março de 90 a.^s quando Salimos de cohaguila no habian llegado los Veynte Soldados de la Vizcaia. los quarenta de çacatecas eran los mas sastres çapateros albañiles mineros, en fin ninguno dellos era para cojer el caualllo en que hauia de caminar aquel dia porque asi que lo soltauau no lo conoçian mas las sillas tan malas que no podian ser peores; desta Manera fuimos caminando por el mismo rrumbo que esta expresado en el diario, que se hiço de dha jornada; lo que note fue que la primera bez que fuimos hallamos muchos yndios en ttodos los rrios y parajes y esta bez llegamos a reconocer la Bahia del espiritu santo y bolbimos al rio de guadalupe sin hauer hallado un Yndio en ttoda la tthierra. llegamos al fuerte que hauian echo los franceses Veynte hombres. los demas quedaron con las rrequas en el rrio de guadalupe. no bimos señal alguna de que Vbiese hauido franceses. todo estaua como lo hauiamos dejado el año anttezedente. si hauia señales de hauer bibido Yndios, yo mismo pegue fuego al fueritte, y como haçia mucho ayre la maderaa era de la Vrca que trajeron los franceses la qual baro al enttrar en la bahia y en media ora, se uido el fuerte rreduçido a çeniça era la ora De medio dia, despues bajamos a la costa de la Bahia. Por ttoda La

orilla Del arroyo por donde los Franceses YBan y benian con sus lanchas y canoas a dha Bahia. y despues de hauer llegado nosotros algunos soldados de los del reyno de leon dijeron Se querian Bañar, para tener que contar en su tierra y deçir se hauian bañado en el mar, y esto es de tanta estimaçion y lauro que an traído frascos de agua de la mar y despues en su thierra de monterey Por grande fauor dejam ber y experimentar como es el agua de la mar, la primera vez que fuimos hauia un soldado em (pablillo) digo en Cohaoguila, que era criollo de Pablillo y su P^e deste se llamaba fulano de escobedo. el qual quando Supo que se trataua ãe yr a la Bahia del espiritu Santo escribio um papel al cappⁿ Alonso de leon, el qual papel deçia. Comp^e. Supp^{co}. a Vmrd me haga fauor de lleuar en su compaña a mi hijo Antt^o; Para que tenga que contar quando sea biejo; quando dhos soldados Se estauan Vañando bimos dentro de la Bahia dos bultos prietos al pareçer como boias que aunque se discurrio si lo serian no se hiço el rreparo que despues hiçieron el cappⁿ Alonso de leon y el Cappⁿ D Gregorio Salinas para ynformar a Su ex.^a Y dhas boyas estarian de tierra como dos tiros de arcabuz y no estauan en la boca Del rrio de San Marcos como ynformaron. Y la boca del rrio de san Marcos no tiene media legua como dijeron. porque quien lo dijo no lo bido y yo que la bide el dia de s Marcos (que por eso se llama de s Mar^s) Digo que tiene Como un ttiro de arcabuz de ancho dha boca del rrio Bolbimos al R^l que nos aguardaua en el rrio de guadalupe llegamos a el y no hallamos nobedad alguna, otro dia Por la mañana Salimos Para los tejas y andubimos como seis leguas. el dia siguiente no se camino; fueron algunos soldados a rreconoger la thierra y ber si pareçian algunos yndios de quem poder tomar rraçon y no hallaron ninguno ni se bieron umos; y a los que nosotros Dauamos todos los dias no rrespondieron nunca a ellos. otro dia por la mañana estando yo diçiendo misa se oyeron dos pelotagos lejos en el monte por la parte del rrio de guadalupe. fueron ha uer quien era. Y fueron tres soldados de los que hiban de los presidios de Vizcaya, llegaron y les preguntamos de su biaje y nos contaron trauajos en esta forma= el segundo dia de pasqua de rresureçion llegamos al saltillo Veynte soldados de los dos presidios de la Vizcaya los mas gercanos a cohaguila que son Cuencame Y el gallo. Y el sarjento maior De la Vizcaya que es Juan Baptista escorça. Señalo Por cabo de los diez Hombres que Ymbio a un mulato nombrado Martincho de

ttal el capp.ⁿ del presidio del Gallo que se llamaua ogalde Vizcayno Ymbio Por cauo de sus diez soldados a Joseph de salcedo, español, estando en el Saltillo, Villa de españoles; un soldado de los de martincho tubo Palabras con el Capp.ⁿ anchiondo Y el alcalde Maior D Alonso ramos (sobri^o del ss^{or} presidente de Guadalajara) quiso prenderlo y no pudo porque dho soldado Con su compañero se salio de lugar Y se fueron donde tenian Su R^l. que era en la hacienda del capp.ⁿ Nicholas de Guajardo; llego dho alcalde maior tras de ellos y con mucha cortesia hablo al cauo de dhoss soldados y dho martincho quedo de llevar el soldado otro dia Para haçerlo amigo con el capp.ⁿ anchiondo, otro dia fueron Y al llegar dho Cauo Con el soldado a las casas rr.^s se ofreçio que hauisaron al alcalde Mayor para un bautismo a que estaua combidado dijo a dhos Soldados, aguardense um poco ya buelbo. Y asi fue que de buelta se compuso la desaçon entre los dhos Y quedaron amigos== otro dia no falto un chismoso (que los ay en abundancia en aquella Villa del saltillo que dijo a Martincho que el alcalde maior decia que el Sabria Casstigar a los Soldados de la VizcaYa, y que quando fue al Bautismo los hauia dejado presos en las casas R.^s desto se pico dho Martincho sobre si el alcalde Mayor podia conoçer causa de los militares Y formo duelo; llamo a quatro de sus soldados y los lleuo consigo Y less dijo que si no eran hombres y hauian de Vyr no fuesen Con el. al fin fueron a las casas rr.^s; y dho Martincho dejo a los quatro soldados a la puerta Y el se entro sin hauisar en la sala y se pusso en el aposento donde estaua dho alcalde maior Con Un religioso de cohaguila, Y al entrar saco la espada y tiro una cuchillada a dho alcalde Maior en que le quito un buen pedaço de la Cauega y le corto um braço del qual a quedado manco Y un mulato que quiso fauorecer a su amo le dio un rrebes en la espada que le partio la cauega. el rreliгиозo quito la espada a dho Martincho Y a este tiempo la jente de lugar aCudian a la puerta para fauoreçer a dho alcalde Mayor los soldados que la guardauan no los dejauan enttrar despues Por el corral fue enttrando la jente, Y seria como las diez del dia Saliose Martincho Y con Sus comPañeros subieron a caualllo y se bolbieron al rreal que tenia Puesto en casa de Guaxardo; toda la jente de lugar salio. armados tras delllos Y Despues de Muchas raçones Y de

Hauerse Defendido en dha casa el dho Martincho se dejo prender porque el que lleuaua la comision que era Ger^{mo} montes de oca le aseguro la uida esto fue el Juebes despues de pasqua de rresureçion, aquella noche le dio sentençia el mismo alcalde Mayor Y el se la notifico en la cama y fue de ser apeloteado a usança de Guerra. otro dia Viernes 21 de Março de 90 a.^s en la plaça del Saltillo Se apeloteo dho Martincho= esta Nueva nos lleuaron los Soldados de la Vizcaya para disculpa de no hauer llegado a tiempo De poder salir de cohaguila con nosotros= el dia que tengo dicho que llegaron estos Soldados fueron tres porque estos se adelantaron Por el mismo rrastro y los demas fueron poco a poco areando la Cauallada que lleuauan que Yba mui mala. luego se despacharon seis Soldados con una carga de arina que fueron a toparlos, Y el capp,^{an} leon y yo con quince hombres fuimos al rumbo del nortte para el rrio de S Marcos Por ber si hallauamos algunos yndios Y de dia Y de noche estabamos dando tiçonaçoss ha uer si algunos nos rrespondian; gastamos en esta mariscada seis dias sin poder hallar Yndio alguno Pasamos el rrio de s Marcos el dia de la cruz a 3 de Mayo; Y otro dia Ya tarde que hauíamos lleuado el rumbo p^a; el nortte, como a las gincos de la ttarde Ya ttodos cansados de caminar los siete dias bimos unas çibolas y los soldados fueron a matar para çenar aquella noche Yo quede con un hijo del capp^{an} leon Y caminando Para el rumbo que lleuauamos, Y al traquido de un arcabuz Salio de un monte una yndia Y acaso mire a mano yzquierda Y bide el bulto que estaua algo distante y no se podia destinguir si era Yndio o algun palo. Y mirando con cuidado si se meneaua bide salir otro bulto mas pequeño en que se rreconoció eran Yndios los dos. yo Y el hijo de leon fuimos para ellos y despues de estar ya çerca los llame con el sombrero y ellos Vhieron y Ganaron el Montte; a este tiempo llego el cappⁿ, leon y algunos soldados y fuimos al monte Y no podimos ber ni hallar Yndio alguno, si hallamos unos Cueros de çibola arimados a un arbol que serbian de haçer sombra; mucha carne de çibola seca y fresca tres gallos de la thierra que estauan asando, lenguas y ubres de çibola que estaban mui buenas que pareçian jamones. no se les quito cosa alguna antes bien les dejamos un manojo de tauaco unas nauajitas Y unos listones Y nos apartamos. dormimos Aquella noche en una lomita çerca

de dho Paraje como dos tiros de arcabuz Y los soldados con cuidado belando Como a lass nueve de la noche bide atigar la lumbré que tenían dhos yndios y entonçes Dije al cappⁿ Alonso de leon o aquí ay muchos Yndios, Y por eso no tienen miedo de nosotros o los que ay biendo que no les hauemos quitado cosa alguna antes les hauemos dejado; es buena jente Y se quieren dar de paz; Por la mañana antes de salir el sol llame al Yndio quem^s Y le dije que haríamos por sauer Si aquellos yndios eran pocos o muchos. Si querían Ser nros amigos o no que naçion eran. el Quem^s rrespondio, como siempre P^e. lo que tu quisieres que haga hare. entonçes mande a un soldado que se quitase la malla que tenía puesta y le mande al yndio quem^s que se la pusiese y le mande Dar un Cau^o. bueno y le dije mira si los soldados ban ha uer estos Yndios. puede ser que tengan miedo y que se huyan. mejor Sera q tu solo bayas a rreconozelos Si sale alguno de Paz a receuirte le diras que benga que nosotros no benimos a quitarles lo que tienen ni haçerles mal alguno sino que queremos ser sus amigos y ayudarlos en todo lo que Pudieremos. al salir dhos yndio [*sic*] cappⁿ leon con los soldados montaron a cauallo para socorrer a dho yndio en caso que Vbiese muchos Yndios y que lo quisiesen matar. Llego el yndio quem^s haçerca del puesto donde hauíamos bisto a los yndios y luego salio un yndio para el y el quem^s le aguardo Y hablaron mui largamente y le dijo al yndio Por señas que es la lengua mas Gen^l, que no tubiese miedo y que biem podia venir a nosotros que eramos buena jente y el yndio como bido al quem^s rayado Como el luego creyo quanto le dijo y binieron Juntos los dos. despues de hauer hablado largamente Con dho yndio por Señas nos lleuo a su rranchito y allamos a su Mujer Y un muchacho como de diez años y no hauia mas jente: estos eran de naçion tejas y abian benido a matar çibolas Y llevar la carne al pueblo luego disPusimos el llevar la carne que tenían y le encargamos que havisase a Su Gou^{or} Y le dijese que lo haguardauamos en el mismo paraje a donde los hauíamos hallado a ellos: a medio dia los despachamos Y nos bolbimos a dormir al Paraje ya rreferido Donde Abiamos allado dhos yndios. deste paraje al

Pueblo de los tejas ay treynta leguas antes mas que menos otro dia por la Mañana Se despacharon quatro soldados que fueron al R^l para haurisar y con orden que biniesen caminando para nosotros q en aquel paraje los aguardauamos. a este tiempo todo se hauia acauado y no comiamos mas que carne asada otro dia a la tarde como a las cinco el yndio que hauiamos desPachado con Su mujer y el muchacho se nos aparecieron en el mismo paraje y preguntandole como no se hauia Ydo a Su thierra nos dijo que aquella noche Se le hauia Vydo el cauallo y que la carne la hauia dejado Colgada ençima de un arbol y que cerca de nosotros hauia benido alcanzar el cauallo. aquella noche durmieron Con nosottros y otro dia por la mañana discurrimos si habriam benido otros yndios con aquel y si el bendria de espia para esto se determino el que fuesen quattro Soldados a rrecorrer la ttierra a lo largo Como tres leguass y biesen Si hauia yndios o algunos rrastr.^s a distançia como de tres leguas hallaron Vn yndio moço mui grande Y en un Cauallo Vayo mui bueno. el yndio andaua buscando çibola y aunque era solo asi que bido los quatro Soldados empeço a dar alaridos y escaramugeando como que no tenia miedo los soldados se le fueron arrimando Sin sacar los arcabuces ni hacer demostracion de pelea Y por Señas le dijeron biniese con ellos y lo trujeron y le dimos de lo que teniamos Y le dijimos Si queria yrle haurisar al Gou^{or} de los tejas le dariamos Vn cauallo, el otro Yndio que antes hauiamos despachado asi que bido que hauia otro que Yba haurisar dijo que le diesen un cauallo bueno; que el yria y dejaria a la mujer y al muchacho que los Cuidasemos hasta que el bolbiese con el Gouvernador. luego lo desPachamos Con adbertençia que por donde biniesen diesen tigo-naços, y que nosotros responderiamos con la misma Señã= despues de quattro dias lleço el rreal al rio De San Marcos y toparon con los yndios de la rrancheria emat too toaa y otros y dijeron dhos yndios que ariba estauan otros Yndios y con ellos dos franceses, leon con unos soldados quedo Y Ymbio a llamarlos y binieron. el uno Se llamaua Pedro muñi criollo de la ciu.^d de Paris, el otro Pedro Talo criollo de la nueva françia. estos tenian sus escopetas Una talega de Polbora, Y Valas; Mas de Veyntte rr.^s çençillos de plata, moneda Castellana ochenta doblones de oro de a quatro moneda De françia los doblones. Luego de Vna mano a

otra se bolbieron 39 estos dos françeses el uno tendria Como 20 a.^s quera el P.^o Muñi el otro Pedro talo tendria Como 11 o doçe a^s llego el rreal a nosotros Y otro dia el cappⁿ leon con los françeses y llego tambien aquel paraje un yndio que Sabia mui bien el camino para los tejas. el qual nos fue guiando hasta que topamos el Gouvernador de los tejas con catorçe o quince Yndios de los Suyos. Y el yndio que hauiamos despachado para que houisase a dho Gou^{or} era quando los topamos Como a las diez del dia Y fue en un arroyo que se estauan bañando Y Por el mucho monte no nos bieron asta estar con ellos asi que dho Gouvernador me bido se bino y me abraço, nos sentamos a hablar por Señas que es la lengua mas Gen^l. por alla y dho Gou.^{or} Saco un costalito de ttuaco molido del que ellos siembran, y otro costalito de Mayz de pinole mui bueno Y blanco y pasamos mas adelante a dormir y aquella noche se dio forma de bestir a dho Gouvernador Para que entrase bestido en su Pueblo y que biese su jente açiamos mucha estimaz^{on} del. a los tres dias entramos en Su Pueblo Y fue lunes 22 de MaYo del ano de 1690— el dia que llegamos llobio mucho y aquel año hauia llouido poco y los maïçes tenian ya mucha neçesidad de agua y en onze dias que estuvimos todos los dias llobio muchisimo, la tarde del dia que llegamos estaua el Gou^{or} en la tienda con nosotros Y una yndia bieja le lleuo Para su comer Vna olla grande de frijoles guisados con nueçes molidas, y tamales; aquella tarde nos dijo dho Gobernador que dormiria con nosotros en la tienda y otro dia nos lleuaria a su casa despues Ya tarde el capp^{an} leon le dijo que fuesen a su casa que el queria llevar unas naguas y otra cosa de rropa para Su Mujer, y dho Gou^{or} le dijo que no que otro dia Yria. Y con todo eso a pura fuerça lo lleuo a su casa otro dia nos dijo dho Gouvernador nos queria llevar a su casa y que en ella podiamos bibir que para todos habria Combeniència. despues de comer trattamos los rrelijiosos el modo que hauiamos De tener Para yr ha uer la casa de dho Gou.^{or} y si hauiamos de quedar en ella yo fui de pareçer que los quatro rrelijiosos que eramos fuesemos con nuestros baculoss que tenian cruz con santos xptos, cantando la letania de nra Señora, y un donado que lleuauamos llebase Por delante un liengo de la Virjen Santisima a modo de estandarte Con Su asta desta manera Salimos del Paraje de donde hauiamos parado para la casa del Gou.^{or} y fue esta acçion tam piadosa que aunque hauia llouido mucho Y

Por donde hauíamos de pasar hauia mucha agua. en la maior Parte del camino tanta que daua a media pierna pero Con tanto feruor que no se sintio. a este ejemplar se enferuorizaron algunos Soldados que Yban a pie por dentro del agua con tanto gusto y feruor q no podian rreprimir las lagrimas de goço y alegria y em particular de los que se esmeraron sin rreparar en agua ni lodo. fuer^{on} el capp^{an} fran^{co} Martinez Cappⁿ D Gregorio Salinas y ottross los demas Como Veynte Soldados yban a cauallo Y el capp^{an} Alonso de leon Con ellos y nos lleuauan en el medio, llegamos a la casa del Gou.^{or} a donde hauia muchos yndios y Yndias Y muchachos. acauamos la letania arrodillados y bendecimos la casa. luego el dho Gou.^{or} bino ha uessar el auito y los demas yndios== luego nos Ygo entrar ha uer su casa la casa es de palos y çacate; de alto tendra como 20 baras; rredonda sin bentanas; no ay mas luz que la que entra Por la puerta, la puerta es como la de un aposento como los de por aca. en medio de la casa esta la lumbre que no se apaga de dia ni de noche. sobre la puerta de la parte de adentro esta un altillo de morillos mui bien puestos. al rrededor de la mita de la casa Por la parte de adentro estan diez camas, estas se componen de un tapete de otates sobre quatro orcones. sobre el tapeste ponen Cueros De çibola en que duermen. de la caueçera y de los pies de la cama Sube otro tapeste que haçe Como un arco que afoirado de un petate de otate mui pintado haçe a modo de alcoua mui preçiosa. la otra mitad de la casa que no tiene camas estan unos estantes como de dos baras de alto y sobre ellos unos canastos de otate mui grandes; y rredondos en que ponen Maiz nueçes bellota frijoles Vna hilera de ollas mui grandes de barro como tinajas Y estas Solo siruen Para el atole quando ay alguna funçion que se Junta Mucha jente seis Morteros de Palo en que muelen el mayz quando lluebe; Y quando no lluebe muelen afuera en el patio. Y luego nos sacaron a cada uno um banquito de Palo Muy bien echo afuera en el patio depues [*sic*] de bista la casa sentamonos por estar el patio mui alegre Y fresco Y nos sacarom para merendar unos tamales como ellos los haçen nueçess Pinole de maiz mui bien echo Y una Caguela grande de maiz guisado con frijoles Y nueçes molidas== bide despues afuera Del Patio en

frente de la puerta de la casa del Gou,^{or} otra casa larga. Y en ella no bibia jente. pregunte que quem bibia en ella o para q era aquella Y me dijeron que en aquella casa se ospedauan los Capp.^{nes} Quando dho Gou^{or} los llamaua para alguna junta, a otro lado bide otra casa mas pequena y sin jente y pregunte lo mismo. Y me dijeron que en aquella casa mas pequena se ospedauan los pajes de los Capitanes porque es ley que cada cappⁿ. lleua su paje quando dho Gou^{or}; haze junta de capitanes. al modo que oseruan; asi que llegan se ospedan en dha casa Y a cada uno le ponen um petate grande de otate mui pintado en que Duermen Y a la caueçera una petaca de otate mui pintada. Y quando se buelben Cada uno lleua su petate y petaquilla. el tiempo que estan para junta el Gou.^{or} les da de comer hasta que los despacha= la orden que ay para el seruicio de la casa del Gou^{or} es cada ocho dias enttrar de seruicio diez Yndias. estas yndias al salir el sol llegan todos los dias cargadas de leña Barren el patio Y la casa acarrean agua de un aroyo algo distante Por ser buena; Y aunque el rrio esta çerca no es el agua tam buena como la del arroyo Muelen maiz para el attole tamales y pinole a la noche se ba cada una a dormir a su casa Y por la mañana buelben; en casa del gobernador bide um banquito de palo en frente de la lumbre y me dijeron los yndios que no me sentase en el porque hauia de morir. y quise sauer que misterio tenia Y dijeron que nadie se sentaba en aquel banquito sino el Gouernador su señor de ellos= en orden a quedar ha uibir los rrelijiosos en casa del dho Gou.^{or} no me pareçio bien por los muchos yndios yndias que a todas oras entrauan y salian. al Gou.^{or} le dije Por el françes com buenas rrazones que estaua su casa mui buena y que estimaua mucho quisiese tener los rrelijiosos en su Compañia y que supuesto hauiamos de haçer casa para degir misa fuera bueno haçer tambien bibienda Para bibir los rrelijios [sic] Porque era fuerça bibiesen junto a la yglesia; enttonçes dijo dho Gouernador; que la ariamos en la parte mas combeniente que nos enseñaria el pueblo Y en donde yo quisiese la ariamos. quedamos en que otro dia beriamos el pueblo para ber que puesto seria mejor para la Yglesia Y bibienda de los rrelijiosos, otro dia fuimos con dho Gouernador Y nos lleuo al Paraje que hauian escojido los françeses Para poblarse el qual esta a la orilla del rrio mui alegre y mui buen sitio que Por estar apartado de los yndios

no hicimos halla el conuento. en dho Puesto nos enseñaron dos cuerpos difuntos de franceses que ambos a dos Se mataron a carabinas. en todo este dia no hallamos puesto a mi gusto otro dia Por la mañana sali con el cappⁿ. Alonso de leon no mui lejos de Donde estauamos Y alle un lindo puesto junto al arroio linda madera arboles de ciruela como la de España; Y luego aquel dia mismo fueron a corttar madera Y acarrearla Y dentro de tres dias se hizo bibienda capaz Y Yglesia Para decir misa con mucha deçençia pusimos delante de la Yglesia una cruz mui alta de palo labrada.= el dia de corpus se canto la misa y antes de la misa se hizo procesion con el santisimo saCramento descubierto de los yndios se junto multitud de jente Porque el dia antes les hauisamos, a los soldados, se les dio ligençia de que disparasen los tiros que pudiesen en la procesion Y al alçar Y acauar la misa. Y quiso la Mag^d Diuina que en aquella Soledad tubimos Vn dia tan grande Y de gran consuelo por poder tener desCubierto el Santisimo Sacramento Y açer procesion, Como se estila entre los catolicos Xptianos, acauada la misa se enarbolo el estandarte R^L que en una parte tenia un santo xpto Y en otra a la Virgen de guadalupe en nombre de Su Mag.^d se hizo Salba rreal Y cantamos el te deun laudamus en accimiento de graçias=

estos yndios tejas an ttenido siempre Vn yndio biejo que entre ellos era el ministro Y el que ofregia a Dios las ofrendas. El modo que tenian era que cosa de comer no la probauan sin que primero lleuasen Parte dello a su Ministro para ofregierla de lo que senbrauan como es maiz frijoles zandias calabasas Y la carne que trahian de gibola. tenia este ministro casa señalada Para los Sacrificios Y en ella se entraua con mucha beneraçion y particularmente estando ofregiendo alguna cosa. nunca ofregieron a ydolos solo, aquel que decian era el que todo lo puede Y del dependen todas las cosas; que es conoçer una primera causa y a este ministro le tienen muchisimo rrepesto [*sic*] asi los cappitanes como el mismo gouernador, Y para que biniese ha uernos y no se enojase Ymbio el gouernador a sus capitanes para que lo festejasen y lo trujesen. fueron Y lo festejaron tres dias Y tres noches con danças Y cantos a Su usanca [*sic*]. Y despues binieron con el y llegaron a mediodia en occass,^{on} que ya queriamos comer. Y Por ber sus çeremonias dije que lo arguarDasemos Para que

Comiese Con nosotros en la mesa. benia Mui despacio Y con mucha grauedad Y con muchisimo acompa^ñami.^{to} De yndios, yndias, Y muchachos. llego mui sebero Y circunspecto Y le dijo el Gouernador asi que llego a nosotros que nos besase el auito y le beso, luego nos sentamos a comer y dije al gouernador lo sentase a su lado; Y dho ministro el primer bocado que tomo hiço en lugar de benediçion el tirar afuera del plato en forma de cruz o como quien señala los quattro bientos; o partes prinçipales del mundo= Despues de comer le dimos rropa para el y su mujer y quedo mui contento, desPues nos dijo un yndio que estaua en los tejas que era de adelante de adelante [*sic*] de Cohaguila Y hablaua en Mexicana que dho ministro de los tejas les hauia dho a ttodos los cappitanes Y demas tejas. (Ya aora bosotros no areis caso de mi porque estos ministros que am benido som berdaderos ministros de (Ayimat caddi) que en su lengua quiere deçir gran Capp.^{an} Y este nombre daua a Dios porque como entre ellos no ay mas nobleça ni grandeça que la de capp.ⁿ por eso aquel que ellos juzgauan que era grande sobre todass las cosas le llamaban Gran Cap.ⁿ Y el gouernador par distinguirlo del nombre de capp.ⁿ Por hauer otros que lo son le llaman desza; que quiere deçir Gran señor Y Superior a ttodos los demas.= acauada la Yglesia y la bibienda en donde se hauian de quedar los ministros se paso todo lo que se hauia de quedar a los rrelijiosos. Y el dia primero de junio, y octaua De Corpus por la mañana se uendijo la Yglesia Y se canto la misa Y despues Se canto el te deun laudamus en acçion de graçias Y los soldados hiçieron la saula real= la yglesia y pueblo se dedico a N. S. P^e s fran^{co}; desPues de comer aquel mismo dia salio el R^l. por aca, Yo me quede asta otro dia que bine alcangarlos en el Camino la noche antes de salir yo de halla llame al Gou.^{or} y le dije que mirase que los Padres que quedauan el los hauia de cuidar Y procurar que su jente les tubiesen rrespecto y asistiesen a la dotrina Xptiana; que los Padres no les hauian de pedir ni quitar cosa alguna, antes en todo lo que pudiesen les ayuDarian Y respondio dho Gouernador; Yo cuidare a los Padres De Manera

que quando tu buelbas no tendran queja alguna que darte de mi Y con todo seguro estan Y pueden Y Pueden [*sic*] quedar despues le dije que me olgaria que su Hermº, Y otro de sus parientes biniesen conmigo para que biesen nra tierra Y lleuar muchas cosas para ellos Y que nro gran Capp^{an} el ss-or Virey los deseaua ber Y los queria mucho. Y luego me dijo su Hermº Y otros dos parientes Y un sobrino SuYo bendrian conmigo Y con adbertengia que me dijo estos que llevas no consientas que nadie les mande nada ni que los agan trauajar de donde se be que entre ellos ay nobleça Y se distinguen los nobles de la jente ordinaria= Desde que llegamos al pueblo de los tejas hasta que salimos adberti algunas cosas y esperimente algunos hombres de los que yban tal al rebes De lo que hauiam parecido en el camino que no los Conoçia Despues de hauer llegado a dho Pueblo porque entendieron algunos hauian de quedar por reyes de los tejas sin acordarse de la orden que su ex^a hauia dado para dha jornada en que mandaua al Cappⁿ Alonso de leon fuese por cauo principal a rreconoçer si en aquella tierra Abia franceses y que llevasen los rrelijiosos que Yban en compaña del P^e fray Damian maçanet, y que si los tejas pedian ministros y queriam bautiçarse quedasen los rrelijiosos Y si dhos tejas se dauan por mui amigos y no se rreçeleua dellos daño alguno que no quedasen muchos soldadoss Y que de no ttener mucha satissfacion de dhos tejaass quedasen los solDados que fuesen neçesarios con consulta y consentimiento del P^e frai Damian Maçanet= Nunca fue menester dejar soldados en los tejas Para rresguardo de los rrelijiosos porque desde que entramos nos rregibieron con tanto amor y cariño que no sabian que azer por nosotros= Y con todo eso el cappⁿ Alonso de leon tenia dispuesto el dejar çinquenta Hombres y por cauo dellos al capp^{an} Nicolas prietto un hombre biejo desnudo y para nada. llego el casso y me dijo dho capp^{an} leon a solas su Yntento. Y le rrespondi Vmrd a de estar a las ordenes de Su ex^a y esto que me diçe Si es ConSulta no a de ser pribadamente enttre los dos. llame Vmrd. a Sus Cappitanes Y delante de los rrelijiosos y dellos Propondra Vmrd lo que tiene que ConSultar. mucho sintio dho leon esta repuesta Porque la pasion no le hauia dejado abrir los ojos= llamo a los Cappitanes Y Yo a los rrelijiosos y dho

Cappⁿ Alonso de leon Dijo que tenia pensado el dejar quarenta o cinquenta Soldados Con un cauo para rresguardo de los rrelijiosos. Y que por mandarle Su ex^a que si hauian de quedar soldados fuesen a satisfacion mia por esso lo Consultaua; a ello rrespondi que no hauia neçesidad alguna de Dejar Soldados por estar la jente mui de paz Y amigable que para lo que se les podia ofrecer a los rrelijiosos pedia tres soldados a mi satisfacion y que si Su mrd queria dejar mas que los dejase mui enorabuena pero que no Serian com pareçer mio ni queria yo que se quedasen mas que los tres; quedo dho leon mui Confuso por lo que tenia adelantado Y discurrido con el cappⁿ Nicolas prieto su compadre que era el que abia de quedar para cauo de los quarenta o cinquenta Soldados. al fin quedaron los tres Soldados que pedi boluntarios, y mui Contentos que fueron de los de çacatecass: a dhos Soldados les dejo dho leon nueve Caualllos de los del rey escopetas um barril de polbora y balas; Para los rrelijiosos quedaron Veynte y seis cargas de arina; Veynte Vacas Dos yuntas de bueyes, arados con rrejas achas y agadones y algunas cositas neçesarias= el segundo dia de junio salimos del Pueblo los rrelijiosos Salieron con nosottros asta fuera del pueblo en donde nos despedimos con artas lagrimas de gusto y alegria; no porque ellos sentian el quedar, antes si dauan muchas graçias a Dios de hauer mereçido tal dicha y quedar con tan santo empleo Como es el de la Combercion de las almass de los jentiles; llegamos al rrio de la Santtissima trinidad a tres de Junio y hallamos dho rrio mui creçido que nos detubo ocho dias Sim poderlo pasar, en este tiempo el herm.^o del Gou.^{or} enfermo y se bolbio a su Pueblo; a los ocho dias higieron una balsa de Palos en que pasaron las cargas ropa y todo lo que benia y la cauallada la echaron a pasar a nado y se haogaron algunos Caualllos: benimos Caminando por el mismo Camino q. lleuamos quando fuimos hasta la rrancheria de los Yndios emat, toaa too; Cauas y ottros que hauia. Y en dha rrancheria tubimos rraçon como los yndios de la costa tenian algunos frangesitos Cautibos; y dijo el capp.ⁿ de dicha rrancheria que aunque ellos tenian guerra Con dichos yndios de la costa

Que Abia un yndio de los Suyos que se comunicaua con ellos y que si Querian Yr dicho yndio los guiaria. determino el capp^{an} leon de Yr con Veynte hombress ha uer si podian rresgatar dichos francesitos llegaron a la costa de la Bahia Y allaron los mismos Yndios que los tenian que acauauan de llegar Con lanças de otra parte de la misma Costa luego Se ttratto que dhos yndios Diesen[?] los francesitos y que les darian Vnos Cauillos y rropa los yndios dijeron que luego los darian de mui buena gana. a este tiempo los soldados empezaron a entrar en los rranchittos de los yndios, Y mirar con demasiado cuidado lo que tenian Y otras Cosas que los yndios entendieron de donde se orijino que tubierom poca sattisfaz^{on} de los Soldados y se rreçelaron dellos y estando todos juntos despues de entregados los muchachos francesitos empezaron los yndios a flechar a los Soldados. al capp.ⁿ leon le dieron dos fleçagos en las costillas y como lleuaua malla no le entraron. a otros dos Soldados les Yrieron los cauillos, de los yndios murieron quatro y dos eridos, cojieron los francesitos y se binieron al rreal que aguardaua en el rrio de guadalupe= benimos siguiendo el mismo camino que lleuauamos quando fuimos, y quando llegamos al rrio del norte hallamoslo mui creçido de manera que en 18 Dias no se pudo pasar Y quando lo pasamos fue con mucho rriesgo Y a nado Y la corriente del rrio se lleuo muchos trastes de ropa cauillos y se haogo un soldado que por mal nombre le llamaban Judas este entre los soldados tenia fama de sauer guardar lo que otros tenian y la mañana que se haogo bolbio una caldereta a un arriero y le dijo s, ^{or} Perdoname que io te hauia Vrtado esta caldereta Y quando se entro al rrio para pasarlo dijo bamonos tirando que sera la Vltima bez. estando en medio del rio se fue con cauillo y todo lo que traia Y no pareçio mas, al mismo tpo que se desapareçio se lebanto un ayre tan rreçio que atemorizaua. Y el agua del rrio se bolbio tam braua que pareçia hauia de Salir de Madre= las cosas que note por particulares Fueron las siguientes

—la primera que el año anttezedente en ttodo la tierra hallauamos Yndios Y este año de 90 hasta rreconocer la Bahia del espiritu santo Y Yr para los tejas no bimos yndio alguno.=

—lo segundo que dho año todos los Soldados Yban Con mucha paz Y orden en lo que hauian de haçer, sin faltar ni hauer falta en la cauallada y este año de 90 los mas dias hauia quem peleaua o los ofiçiales daua[n] De Cuchilladas a los soldados. de manera que un Donado que lleue, los mas dias tenia que curar soldados. Y

la cura era con bino tibio que digen es bueno Para curar cuchilladas en la cauega==

lo terçero, que hauia tanta Quenta en la cauallado Y mulas de la rrequa que las mulas cargadas no las echauan menos asta que hauian menester lo que Yba en las cargas. la quenta de los Cauillos nunca los ofiçiales la Supieron—

lo Quartto. q el capp^{an} leon lleuo un compadre el s^{or} Capp^{an} fulano de tal tan noble que por el nunca faltaron cuentos y chismes; tan caritatibo que solo Su Comp^e, leon bebia chocolate; los demas agua tibia, tan comedido que madrugaba a beber chocolate, y despues con los demas bolbia a beuer tan cuidadoso que se desbelaua y a media noche Yba a sacar el chocolate De las Cajas Y quigas destos debelos [*sic*] nacio el que hauiendo de dejar ~~este~~ [*sic*] el cappⁿ leon por orden, de su ex^a, doce arrobas de chocolate y otras tantas de açucar a los rrelijiosos no dejo mas que seis: este tal comp.^e es tam bien hablado que una bez me dijo a mi, em berdad en berdad que despues de cortes no hauido otro hombre en las yndias Como mi Comp^e; el ss^{or} Gen^l. Alonso de leon=el dho comp.^e es hombre tam piadoso de los yndios que De uer los pobres tapados y bestidos con gamucas y pellejos de zibola con todo Secreto procuraua darles la ropa que su ex^a. Ymbio Para ellos, como son fregadillas bayetas Paño cuchillos pero esta limosna que el Ss^{or} Comp^e, haçia a los yndios era quitandoles primero la que tenian= Dandoles uno quedaua Con quatro==

la Quinta que hauiendo algunas quejas de los yndios en que decian que loss soldados llegauan a sus casas el cappⁿ, leon nunca trato de rremediar cosa alguna y particularmente querellandose el herm^o del Gou.^{or} De los tejas de que le quisieron forçar la mujer, dije, al cappⁿ. leon que Como Consentia tal picardia que semejante acçion con ynfieles a quien Ybamos a dar buen exemplo no se consenttia entre moros o erejes. callo la boca y no hablo palabra quigas por no ser descubierto==

Y Por no tener mas tiempo solo rreferire lo mas particular de todo Y fue estando en el Pueblo de los tejas despues de hauer rrepart.^{do} Ropa a los yndios Y al Gou, ^{or} una tarde dijo dho Gou.^{or} de los tejas que le diesen um pedaço de Vayetta açul para mortaja y enterrar a Su Madre, quando muriese. Yo le dije que de paño Seria mejor Y dijo que no queria otro color Sino el açul pre-guntele que misterio tenia el color açul. Y dijo dho Gouernador que ellos querian mucho el color azul Y enterrarse Particularmente con ropa deste color Porque en otro tiempo los Yba ha uer una

Mujer mui hermosa la Qual bajaua De lo alto Y dha Mujer Yba bestida de agul y que ellos querian ser Como dha mujer. Y preguntandoles Si hauia Mucho tiempo dijo el gouernador no hauia sido en su tiempo que su Madre que era bieja la hauia bisto y los demas biejos, de donde se be claramente fue la M^e, Maria de Jesus de agreda la qual estubo en aquellass tierrass; muchisimas beces Como ella misma Confeso al P^e, Custodio del Nuevo Mexico. Y las Vltimas beces que estubo fue el año de 1631= como consta de su misma declaracion que hiço a dho P^e, custodio del nuevo Mex^{co}=

Muy[?] de VM. q B. V P

Fray Damian Mançanet (Rubrica)

TRANSLATION.

LILIA M. CASIS.

Translator's Note.

In this translation it has been attempted to keep in view not only the faithful rendering into English of the Spanish original, but also, as far as was practicable, the preserving of the naive and simple style of the Spanish letter.

In order to obtain this double result, as well as to secure a fairly smooth English version, it has been necessary to break the unpunctuated Spanish original into sentences and periods, at times to vary connectives, and, in a very few instances to interpret ambiguous or obscure passages. However, an earnest effort has been made not to take any undue liberties with the original text. Reference to the original will show that the paragraphing is the translator's almost throughout.

Proper names of persons have been retained unchanged, with the single exception that the antiquated spelling with *ç* has been, for popular convenience, changed to the modern *z*; thus, *Siguença* has been written *Siguenza*.

A few notes have been appended where they seemed absolutely necessary. Particularly, attention has been called to the digressions which often seem to break the narration with more or less abruptness; they are a characteristic feature of the original.

Although I assume personal responsibility for the accuracy of the rendering into English, yet the finished translation is to such a degree the result of the joint work of Dr. Garrison and myself that it must be essentially considered as due to our united efforts.—LILIA M. CASIS.

In the reprint of the translation, some corrections have been made, likewise a few changes to ensure greater accuracy.—LILIA M. CASIS.

LETTER OF DON DAMIAN MANZANET TO DON CARLOS DE
SIGUENZA RELATIVE TO THE DISCOVERY OF
THE BAY OF ESPIRITU SANTO.

My dear Don Carlos de Siguenza y Góngora:—

The following is the narrative for which you ask me, of the discovery of the bay of Espiritu Santo and the Rio de los Tejas:—

In the year 1685-'86, His Excellency the Viceroy, who, at that time, was Conde de Paredes, Marqués de la Laguna, gave orders to the Marqués de S. Miguel de Aguayo, who was then governor of the Nuevo Reyno de Leon, to send out a company of horse soldiers along the sea-coast lying north beyond Tampico, towards the Rio Bravo and the Magdalena. And the said governor sent out fifty

men, headed by Capt. Alonso de Leon. With his soldiers, the said commander reached the sea-coast, and following along the coast, they passed the Rio Bravo with considerable difficulty. This river is the same found at the passage into New Mexico, and the Indians give it various names, for it is called by different persons Rio Bravo, Rio Grande, Rio Turbio. In New Mexico it was never known whence this river originated; all that was ever found out was that it issued from the Gran Quivira. Thus said the Indians who came to New Mexico from the interior.

But let us turn our attention again to the route taken by Capt. Alonso de Leon and his soldiers. After crossing the Rio Bravo, they reached another river, to which they gave the name of Rio Solo. This river, they say, forms at its mouth a lake which they were unable to pass, and they returned to the Nuevo Reyno de Leon without having had any news of the bay of Espiritu Santo, and still less of the French who were settled about this bay.

By order of His Excellency, the said governor sent a second time an expedition to discover the bay, and he sent two companies of horse soldiers led by Capt. Alonso de Leon, and they arrived the second time at the Rio Solo, when, not able to proceed any further, they returned without bringing any information. And since they had twice gone down to the sea-coast, and on both occasions failed to learn anything, they considered the whole report as being unfounded. So it came about that they paid no more attention to the matter, and took no further steps concerning it.

At this time I was living at the Mission Caldera, in the province of Coahuila, whither I had gone with the intention of seeing whether I could make investigations and obtain information about the interior of the country to the north and north-east, on account of facts gathered from a letter now in my possession, which had been given in Madrid to our Father Fray Antonio Linaz. This letter treats of what the blessed Mother Maria de Jesus de Agreda made known in her convent to the Father Custodian of New Mexico, Fray Alonso de Benavides. And the blessed Mother tells of having been frequently to New Mexico and to the Gran Quivira, adding that eastward from the Gran Quivira are situated the kingdoms of Tielas, Theas, and Caburcol. She also says that these names are not the ones belonging to those kingdoms, but come close to the real names. Because of this information, brought by

me from Spain, together with the fact of my call to the ministry for the conversion of the heathen, I had come over and dwelt in the missions of Coahuila and learning that His Excellency was taking steps to open up the interior, to lead to the discovery of the bay of Espiritu Santo, and to find out whether any Frenchmen were there, I endeavored to learn from the Indians coming from the interior whether they knew where there dwelt men white like the Spaniards. And in time I learned that there were indeed some, and he who told me was an Indian whom I had with me, a man whom I had converted a little before, and in whom, though he had been a pagan, I had recognised a high degree of truthfulness. Thereupon I charged him very earnestly to ascertain in detail where and how far distant these settlers might be, and what manner of people they were, likewise whether the country to be traversed were passable.

Just at this time there arrived another Indian, of the Quems nation, and he told me that he had been even in the very houses of the French; there were many of them, he said, including women; they were well armed, and had some very large fire-arms (which were the pieces of ordnance). On my asking whether he were well acquainted with the country, he said that, if I wished, he would take me to the place without any risk, that there we should also find priests like myself, and that already the people were sowing maize and other crops.

At this time Capt. Alonso de Leon, the same who had gone out as commander of the companies from the Nuevo Reyno de Leon, became captain of the presidio of Coahuila, and before going out to his presidio, he came to the Mission Caldera, where I was living, and I made known to him what had passed between the Indians and me concerning the discovery of the bay of Espiritu Santo, endeavoring to persuade him that we should set out thither. He asked whether there were some unmistakable sign which might be made known to His Excellency, and which would make it evident to him that the report was true, so that he might undertake the expedition.

Then I called the Indian named Juan, captain of the Pacpul nation, and bade him say what he would dare undertake in order to ascertain and prove that there were in the interior men white like the Spaniards. He said that in a "ranchería" of

heathen Indians, which must be some sixty leagues distant, there was a white man, one of those dwelling in the interior, and that, if I so wished, he would go and bring the other out of the "rancheria." Thereupon I despatched him, and that he might the more readily execute his commission, I gave him the clothing and the horses which I had with me, for him to give to the chiefs of the place where was the man of whom he spoke (whom, from the description given, I inferred to be French).

This captain of the Pacpul nation, known as Juan, set out, and having come close to the sierra of Sacatsol (which means "stone nostrils," and in the language of the Indians of that place is called Axatscan, with the same meaning) he found an assembly of many Indian nations composed of the following: Mescales, Yoricas, Chomenes, Machomenes, Sampanales, Paquachiams, Tilpayay, Apis. This sierra of Sacatsol is twenty leagues beyond the Rio Grande, which is the stream coming from the north, and is called also Rio del Norte; the distance from the Mission San Salvador to the said sierra is sixty leagues, and from Coahuila the same.

The said Indian, Juanillo, found the said Frenchman told him that I was asking for him, and took him out to another "ranchería," leaving word with the Indians that they should not be afraid, and that I desired to visit them. Returning, he told me how he had left the Frenchman, and that we might without fear go after him. I notified Capt. Alonso de Leon, who, with twelve men, went quite undisturbed, and they brought the Frenchman, painted like the Indians, old and naked. His name was Juan Francisco So-and-so, and he says that he is a native of Cheblie in New France. This Frenchman Capt. Alonzo de Leon placed in the hands of His Excellency the Conde de la Moncloba, and in all his testimony the said Frenchman always lied.

After the Conde de la Moncloba had determined on the expedition to discover the bay of Espiritu Santo, there arrived as viceroy in this kingdom His Excellency the Conde de Galbe, who put his whole heart into this cause. As soon as he came into power His Excellency ordered Capt. Alonso de Leon to pursue the journey to the bay of Espiritu Santo, as his predecessor had ordained, and for the said expedition forty men went out from the presidios of

Vizcaya, and from the Nuevo Reyno de Leon forty others. From all the men three companies were formed, having Capt. Alonso de Leon as commander-in-chief and Nicolás de Medina as sargento mayor; the leader of one company was Tomás de la Garza, of the second, Lorenzo de la Garza, and of the third ¹Alonso de Leon, the royal alférez, Capt. Francisco Martinez, who was a discharged sargento, having just finished his term of service in Flanders.

We left Coahuila on the twenty-sixth of March in the year 1689, and went as far as the Río del Norte, which, in the said province of Coahuila is called the Río Grande, our guide still being the Indian Juanillo, and when we reached the said river, I sent for the Indian who knew the country and had been among the Frenchmen, whom I call Quems, because he belonged to the Indian nation of that name. We traveled on towards the northeast and at times east-north-east, until we reached the river of Our Lady of Guadalupe. And here I asked this Indian whether the dwellings of the French were still a long way off, thinking that when we should be distant from them a day and night's journey, some of us might push forward in order, unnoticed, to take a survey of the village. The Indian replied that the village was about fifteen leagues distant from that river.

On the morning of the next day Capt. Alonso de Leon asked me what we should do in order to ascertain the number of Frenchmen and the condition of things in their village. With regard to this there were various opinions, mine being that, since we had with us the Quems Indian who was well acquainted with the country, we should all have a mass sung in honor of the Blessed Virgin of Guadalupe that very morning, at the very place in which we were; also, that when we should succeed in reaching the dwellings of the Frenchmen, we should have another mass celebrated, in honor of Saint Anthony of Padua. All consented very readily to this, and, soon, at about nine o'clock in the morning, the mass to the Virgin was sung.

After that it was arranged that, the two Indians, Juanillo the Papul and the Quems Indian, serving as guides, twenty-five men should travel on with us until we should come upon the French

¹This follows the original; there may be an error of the scribe.

village in the early morning, while the remaining soldiers with the beasts of burden should come behind us and camp when they reached a suitable spot. This spot they should then not leave until we returned, unless by the express command of Capt. Alonso de Leon. When we started out, the rear-guard received orders to proceed slowly, watching cautiously lest any Indian should appear; in case any did, they were to seize him without doing him the least harm, and notify us of the capture.

After traveling some four leagues, the rear-guard saw an Indian come out of a dense wood, and called to him, and he went towards them without any show of resistance. They sent us word, and we halted. On the arrival of the Indian the two we had along asked him whether there were, thereabouts, any of the white people who dwelt further on. He said that, as to those living further, they used to inhabit houses which now no longer existed, for, two moons previous, the Indians of the coast had killed all but a few boys whom they had carried off; that he himself lived in the "ranchería" of the Emet and Lavas Indians, which was about two leagues out of the route which we were following towards the bay of Espiritu Santo. We went with this Indian to the "ranchería" of which he spoke, and reached it at about three in the afternoon. As soon as the Indians became aware of our presence, they made for the wood, leaving to us the "ranchería," together with the laden dogs, which they had not been able to drive fast enough when they fled. The Indian who served as our guide himself entered the wood, and called to the others, declaring that we were friends, and that they should have no fear. Some of them—and among these was their captain—came out and embraced us, saying: "thechas! techas!" which means "friends! friends!" One of those who came out first was a big young fellow about twenty years old, who wore a Recollect friar's cloak, and when we saw that it was the cloak of a friar, we gave him a blanket, and I took the robe from him.

The said Indians told how, two days previous, two Frenchmen had passed by with the Tejas Indians. That very afternoon we started in pursuit of the said Frenchmen, and at sunset, we reached the "ranchería" of the Toxo and Toaa Indians, who told us that the said Frenchman had passed by with the said Tejas, and had been unwilling to remain there with them. That night we slept near the "ranchería," and at eight in the evening some Indians

came to the place where we were, one of them dressed after the fashion of the French. And they brought some French books, and a Holy Bible. The next morning we set out in quest of the said Frenchmen, passing through some very dense woods; and at about two o'clock in the afternoon we came to some "ranchitos" of Emet Indians. On our inquiring concerning the Frenchmen these Indians pointed out to us an Indian who had just arrived and who had conducted them (the Frenchmen) as far as the San Marcos river, and when we wished to cross they told us that we would not be able to cross the said river. We told the Indian who had led the Frenchmen that if he would take them a paper and bring an answer we would give him a horse, and that he should take the answer to the houses where the Frenchmen lived. Capt. Francisco Martinez wrote the letter in the French language because he was master of it.

We returned where the camp was, five leagues beyond the Guadalupe river, and we learned that three days previous the horses had stampeded, and a number having been recovered, fifty were still missing, and in pursuit a soldier had lost his way.² This man remained missing four days, and in the meantime he met with some Indians who were skinning a buffalo, who took him home with them at nightfall to their "ranchería," giving him to eat of the buffalo meat, and whatever else they themselves had. On the day after this, an Indian belonging to the same "ranchería" came there with a small bundle of tobacco. This Indian was the one who had been with us, and he made a long harangue to all the Indians who were in the "ranchería." As to the soldier who was lost, when he met with the Indians who had the buffalo, they spoke to him by signs, and he understood them to tell him to make a fire. This he must have inferred from seeing the meat they had, or he was frightened at seeing himself lost among barbarian Indians; he spilled³ on his cloak the powder he

²The narrative proper is interrupted here, rather awkwardly, by an account of what befell the soldier in question during the four days he was missing.

³The Spanish construction at this place can not be rendered literally. The above is evidently what is meant. Word for word, we have, "either he inferred this from seeing the meat they had, or on account of the fear he felt at seeing himself lost among the barbarian Indians, he spilled, etc." See original.

was carrying in a flask, and on his striking the light a spark fell on the powder, and it burned his whole side from head to foot. When the Indians learned that we were in their territory, they must have come to the conclusion that, since that man was lost, his comrades would be sure to look for him. The next day they brought him his horse, and, since he was so badly burned that he could not help himself, the Indians themselves saddled it for him, and assisted him to mount, telling him by signs to go with them. They brought him very near to the place where we were, just a couple of shots away. The Indians who brought him, not wishing to approach us, signified to him that he should go on, using signs to indicate to him where we were, at the foot of a hill which he saw there. At the foot of that hill, on the other side, they left him, and he reached us at nine in the morning, which was for all a source of great satisfaction. We felt very sorry when we saw how badly burnt he was.⁴

On the following day we left for the settlement of the Frenchmen, and when we were about three leagues from it there came out some twenty-five Indians. Now the old Frenchman who accompanied us took occasion to say that the settlement of the Frenchmen was not in the place to which the two Indian guides were taking us. On the way this Frenchman tried several times, by means of an Indian of the Cavas nation whom he had with him, to make our two Indians desert us, or say that it was very far, and that we should not be able to cross the rivers which were on the way. I resented so much that the Frenchman should be given occasion to speak that I grew angry, and Capt. Alonso de Leon said to me: "Father, we are going wherever you wish." We continued following the two guides quite three leagues; we arrived at a stream of very good drinking water, and the two Indians said to me: "Lower down on the bank of this stream are the houses of the French, which must be about three leagues off." Then the old Frenchman saw that there was no help, and that we were certain to come upon the village. He then said: "Sir, now I knew very well, yea, very well, that the houses are on this little river."

We started the next morning, and three leagues off we found

⁴Here the thread of the narrative is resumed.

⁵Here the Frenchman's words are given in what seems to be a conscious reproduction of his broken Spanish. Cf. original.

the village of the Frenchmen on the bank of the stream, as I had been told by the two Indians, the Quems and Juanillo the Papul. We arrived at about eleven in the forenoon, and found six houses, not very large, built with poles plastered with mud, and roofed over with buffalo hides, another larger house where pigs were fattened, and a wooden fort made from the hulk of a wrecked vessel. The fort had one lower room which was used as a chapel for saying mass, and three other rooms below; above the three rooms was an upper story serving for a store-house, wherein we found some six loads (*cargas*) of iron, not counting scattered pieces and some steel, also eight small guns and three swivels made of iron, the largest pieces being for a charge of about six pounds of shot. The pieces and one swivel were buried, and Capt. Alonso de Leon carried off two of the swivels. There was a great lot of shattered weapons, broken by the Indians—firelocks, carabines, cutlasses—but they had not left the cannon, only one being found. We found two unburied bodies, which I interred, setting up a cross over the grave. There were many torn-up books, and many dead pigs.

These Frenchmen had a piece of land fenced in with stakes, where they sowed just a little corn, and had an asparagus bed; we found also very good endive. This place affords no advantages as to situation, for good drinking-water is very far off, and timber still further. The water of the stream is very brackish, so much so that in five days during which the camp was pitched there, all the horses sickened from the brackish water.

The next day we went down to explore the bay of Espiritu Santo, and coasted it until we succeeded in finding the mouth; in the middle of this there is a flat rock, and all along the shore of the bay there are many lagoons which it is very difficult to cross. Blackberries are abundant, large, and fine, and there are a number of stocks which seem to be those of grape vines, but no trees, and no fresh water. The Indians dig wells for drinking water.

After exploring the bay we returned to the main body of our party, whom we had left in the village; we arrived there at noon, and remained there that afternoon, and the next day they bent

⁶This passage might also be read, "and remained there. That afternoon and the next day they bent, etc." The absence of punctuation causes some difficulty in this and similar passages. Cf. original.

the large iron bars, making them up into bundles,⁷ in order to carry them with ease. We found the Indian with the reply to the letter which we had written to the Frenchmen; they said that we should wait for them, that they would soon come, that another Frenchman was further on, and that they were waiting for him in order that they might come all together. The Indian received the horse, as we had ordered. As to the fort, Capt. Alonso de Leon would not have it burnt down, and it remained as it was.

The next day we set out on our return trip to the Guadalupe river, and when we got halfway, since we saw that the Frenchmen did not come, Capt. Alonso De Leon, with twenty-five men, went to the "ranchería" where they were, and the main party went on as far as the Guadalupe river, where it remained waiting three days. The Frenchmen were in the "ranchería" of the Toaa Indians, with the Tejas; they came to the Guadalupe with Capt. Alonso de Leon, and arrived there on the 2nd of May, '89. Two Frenchmen came, naked except for an antelope's skin, and with their faces, breasts, and arms painted like the Indians, and with them came the governor of the Tejas and eight of his Indians. Through that day and night I tried my utmost to show all possible consideration to the said governor, giving him two horses, and the blanket in which I slept, for I had nothing else which I could give him. ⁸Speaking Spanish, and using as an interpreter one of the Frenchmen whom we had with us, I said to the governor that his people should become Christians, and bring into their lands priests who should baptize them, since otherwise they could not save their souls, adding that if he wished, I would go to his lands. Soon the aforementioned governor said he would very willingly take me there, and I promised him to go, and to take with me other priests like myself,

⁷The "tercio" (cf. original) is technically the half of a regular load.

⁸This passage is difficult to handle, partly because one word in the MS. is not easily read (cf. original), partly because there seems to be an error of the scribe. While the translation attempts to render what appears to be the meaning, it is not entirely satisfactory; it assumes the defaced word to be "tenia," and "en Castilla" to represent "en Castellano." It has been suggested, plausibly enough, although I did not quite see my way to adopt the view, that the defaced word should be "serbia" or "bibia," and hence the meaning: "By one of the Frenchmen who used to serve (or live) in Castile, I told, etc." Suggestions are invited.

repeating to him that I would be there in the following year, at the time of sowing corn. The governor seemed well pleased, and I was still more so, seeing the harvest to be reaped among the many souls in those lands who know not God.

The next day was the day of the Holy Cross—the 3rd of May; after mass the governor of the Tejas left for his home and we for this place. We arrived at Coahuila, and Capt. Alonso de Leon sent the two Frenchmen—the one named Juan Archebepe,⁹ of Bayonne, the other Santiago Grollette—¹⁰ from Coahuila to Mexico, with Capt. Francisco Martinez, and his excellency the Conde de Galbe had the Frenchmen provided with suitable clothes and dispatched to Spain on shipboard in the same year, '89.

All this news did not fail to create excitement and to give satisfaction not only to His Excellency but also to other men of note in Mexico, and there were several meetings held in order to consider measures not only for keeping the French from gaining control of those regions and settling in them, but also for the introduction of religious ministers.

At this time His Excellency deigned to send for me, asking the Rev. Father Luzuriaga to give orders for my coming. I was living at the Mission of San Salvador, in the valley of Santiago, in the province of Coahuila. I went to Querétaro, arriving at my college of the Holy Cross on the 24th of October, in the year '89, and left for Mexico on All Soul's Day. On the 5th of November I came to the convent of San Cosme, and the next day there entered Mexico the Very Rev. Father Fray Juan Capistrano, who came from Spain as commissary general of this province of New Spain.

It seems that Our Lord had ordained that it should not be Father Luzuriaga's good fortune that in his time priests of the order of our Father Saint Francis should go among the Tejas, for he always objected to the idea that the brethren of that holy order should undertake missions to the heathen, their chief office being that of Apostolic Missionaries among communities of both the

⁹This is the writer's rendering of the French name "Jean L'Archevêque." It may be either merely an incorrect Hispanized rendering of the name, or a translation into the obsolete form for the word "archbishop."

¹⁰In the Spanish, "y" seems here misplaced. Cf. original. The translation here given follows what is evidently the sense.

faithful and infidels.¹¹ For after the Rev. Fathers, Fray Juan Bautista Lazaro and the Predicador Fray Francisco Esteves came to Guasteca, and founded at Tamaulipas a mission for heathen Indians, when already the mission included more than three hundred families, without counting a large number who were in process of joining, and the Indians were very much pleased and very attentive to the Christian doctrine, the Rev. Luzuriaga ordered the fathers to depart, and to leave the said mission and the Indians, no ground or motive being stated except that those regions belonged to the district of Tampico, and that the priests belonging to that district would look after that settlement of Indians. The reverend fathers obeyed the Rev. Luzuriaga's orders with heavy hearts, seeing that, after the arduous labors by which they had gained that post, those poor heathens would be lost. After those priests had departed and left the Indians, the district fathers never again gave a thought to them or the posts. When the fathers took leave of the Indians, there was a pitiful scene, and what the Indians said moved one to tears, for they asked why the fathers, though priests and ministers of God, had deceived them, since they had pledged their word to minister to them, to teach them and baptize them, and now, if the unsettled life they led, without rule or law, were an evil one, whereby they should lose salvation, the fathers would be to blame, for these were leaving them and had deceived them. With these and many other expressions they parted, the fathers in tears over the fold which was now without a shepherd, yet on the other hand, feeling compelled to obey. On another occasion, when the superior of our holy order begged for permission to enter New Mexico, the Very Rev. Luzuriaga refused and would not allow it. He ever remained adverse to the introduction of priests among the heathen. However when there came out of the land of the Tejas tidings of discoveries which were noised abroad, he thought of many possible measures, and of sending priests out of the provinces, but our Lord God ordained that when I reached Mexico, another commissary general, as I have already said, was ruling.

I reached the said city and saw the very reverend father and we spoke of the Tejas. I told him how I had been called by His Ex-

¹¹With his characteristic fondness for digression, the writer here goes back in point of time, recounting anterior events.

cellency and by the Very Rev. Luzuriaga, and he said to me: "See His Excellency, and then we shall confer." I had an interview with His Excellency, and spoke at great length of the bay of Espiritu Santo and of the Tejas, and immediately he replied that he would foster the cause with might and main.

Besides the news which we had brought with us on returning from the bay of Espiritu Santo, Capt. Alonso de Leon had brought the information that an Indian who had come from there at a more recent date than ourselves said that among the Tejas there were eighteen Frenchmen, and that houses had been built; that they had flocks of goats and sheep, and that some of the Frenchmen had gone to their country for women and for more men. I do not know what Capt. Alonso de Leon had in view in giving this account to His Excellency, for I had seen the Indian and spoken to him before he saw Captain Leon, and he told *me* that he came from the interior, and had been told that six Frenchmen, who seemed to have lost their way, were wandering among the Tejas. He had also heard of the coming of¹² some Tejas Indians, and that on their advancing further on this side of the Rio Hondo, other Indians had come out to attack them, that they had killed two of them, and that the rest had returned to their homes. It seems to me that they must have made the old Frenchman who lived in Coahuila say this, because in tracing the report to its source they said: "Juan says so"; and since the said Juan lied in all his accounts, he certainly lied that time also, for the Indians themselves were ignorant of such an occurrence, and when we went among the Tejas they knew nothing about the reported murders.

But, to return to our subject. When I was in Mexico and had spoken to His Excellency at different times concerning a second expedition to the bay of Espiritu Santo and a visit to the Tejas His Excellency resolved to call a general meeting in order to decide what should be done. Taking for granted the information given by Capt. Alonso de Leon about a settlement of Frenchmen among the Tejas, and concerning the death of those who had settled on the bay of Espiritu Santo it was uncertain whether some French vessel might have come afterwards with settlers for the

¹²The Spanish has "un Indios Tejas," which seems to be an error of the scribe. Cf. original.

bay; besides, there were other grounds for action in the fact that the Tejas were asking for priests for their country. All these grounds being taken into account in the general meeting, there were various opinions, and finally His Excellency decided that a second expedition should be undertaken to the bay of Espiritu Santo. Previously Capt. Alonso de Leon had already made known to His Excellency all that was necessary for that journey in case it should be undertaken. His Excellency ordained that Capt. Alonso de Leon should go as commander, taking with him a hundred and ten soldiers,—twenty from the presidios of Viscaya, those nearest Coahuila, forty who enlisted in Sombrerete and Zacatecas, the rest from Saltillo and the Nuevo Reyno de Leon—one hundred and fifty loads (*cargas*) of flour, two hundred cows, four hundred horses, fifty long firelocks, twelve hundred weight of powder, and three hundred weight of shot. They were to inspect the bay of Espiritu Santo and to ascertain whether there were any Frenchmen left of those who used to live there, or whether others had recently arrived; the wooden fort built by the French was to be burnt down, and Capt. Alonso de Leon was to communicate with the Governor of the Tejas from the bay of Espiritu Santo as to whether he would be willing to have the ministers of the holy gospel enter into his territory, as he had promised Father Fray Damian Manzanet a year previous. If the governor consented, then they should escort the priests, proceeding with every precaution, and should dispatch an order requesting and charging the Very Rev. Father Commissary General to send with Father Fray Damian Manzanet those of the brethren of the Holy College of the Cross who should prove suitable, the said father to decide how many priests would be needed at first. At the same time he was to be provided with all the necessaries for the journey. And I, being present at this general meeting, remarked that I would take along three priests for the Tejas, myself being the fourth, besides two for the mission of San Salvador, which is on the way, making a total of six priests to be sent by the college; and in the event of the Tejas receiving the faith, then the college should send whatever other priests would be required. This was resolved by the general meeting.

Afterwards His Excellency bade me make a note of what I needed to take along, whereupon I replied that for the moment I only wanted wine for the masses, a wafer-box and wax; as to

other necessities, such as vestments and other things, I should procure them myself. It was determined that the journey should take place after Christmas, so when the Christmas feast was over His Excellency dispatched Capt. Francisco Martinez with twenty mules laden with wine, wax and so on, also clothing for distribution among the Indians, and six loads (*cargas*) of tobacco; and at the College of the Holy Cross at Queretaro, with the priests who were to accompany me, I awaited him. These priests were the Father Predicador Fray Miguel Fontecuberta, the Father Predicador Fray Francisco de Jesus María, the Father Predicador Fray Antonio Perea, the Father Predicador Fray Francisco Hidalgo, the Father Predicador Fray Antonio Bordoy. Those who remained in the Mission San Salvador were the fathers Fray Antonio Perea and Fray Francisco Hidalgo.

We left Coahuila for the Tejas on the third day of the Easter feast, March 28, '90. When we left, the twenty soldiers from Vizcaya had not yet arrived. The forty from Zacatecas were for the most part tailors, shoemakers, masons, miners—in short, none of them could catch the horses on which they were to ride that day, for when they had once let them go they could manage them no longer. Besides, we had saddles that could not have been worse.

Thus we went on traveling by the route described in the journal which was kept of this expedition. What I noticed was that on our first trip we had found many Indians along the rivers and everywhere else, while this time we went to inspect the bay of Espiritu Santo and returned to the Guadalupe river without having found a single Indian in all the country. Twenty of us reached the fort built by the Frenchmen, the rest remained with the horses by the Guadalupe river. We saw no trace of Frenchmen having been there during our absence, all being as we had left it the year before, except that, certainly, there were signs that the Indians had dwelt there. I myself set fire to the fort, and as there was a high wind¹³—the wood, by the way, was from the sloop brought by the Frenchmen, which had sunk on entering the bay—in half an hour the fort was in ashes. This was at the hour of noon; afterwards we went down to the coast of the bay, all along the banks of the

¹³In the Spanish the parenthetical remark is not cut off from the context, but I believe the translation gives the meaning accurately. Cf. original.

arroyo by which the Frenchmen passed in and out of the bay with their barges and canoes. And after we had arrived, some of the soldiers of the Reyno de Leon said that they wished to bathe, in order to be able to tell that they had bathed in the sea, this being esteemed so remarkable a thing that they carried away flasks of sea-water which later, in their own country of Monterey, it was held a great favor to try and to taste, because it was sea-water.

¹⁴On our first journey there was a soldier in Coahuila who was a Creole from Pablillo. His father's name was So-and-so de Escobedo, and when he learned that an expedition to the bay of Espiritu Santo was being planned, he wrote a letter to Capt. Alonso de Leon, which letter ran as follows:—"Compadre, I entreat you to do me the favor of taking my son Antonio among your troops, that when he is old, he may have a tale to tell."

¹⁵While the soldiers were bathing, we saw in the bay two dark and bulky objects, looking like buoys, and though there was some discussion as to whether they might be buoys, no special investigation was made, such as Capt. Alonso de Leon and Capt. D. Gregorio Salinas made later on in order to give information to His Excellency. The said buoys must have been distant from the land about two gunshots, and they were not in the mouth of the San Marcos river, as they reported, nor is the mouth of the San Marcos river half a league wide, as they said, for whoever said so did not see it, and I, who saw it on the feast of San Marcos (that is why it is called the San Marcos river), I say that the mouth of the river is about a gunshot wide.

We returned to the main body of the army, which awaited us by the Guadalupe river; arriving there we found nothing new. The next morning we left for the country of the Tejas, and journeyed some six leagues. On the next day there was no traveling done. Some soldiers went out to reconnoitre, and to see whether there appeared any Indians from whom they might gather information. They found none, and no smoke was seen, nor was there ever any answer to that which daily we allowed to rise. The next morning while I was saying mass two gunshots were heard far away in the

¹⁴Another digression; this time the writer introduces a reminiscence in order to illustrate his statement concerning the current thirst for adventure.

¹⁵Here the narrative is abruptly resumed.

thicket towards the Guadalupe river. Some one went to see who it was, and it proved to be three of the soldiers who belonged to the garrisons of Vizcaya. They came up, and we asked them about their journey, and they told us of hardships as follows:

¹⁶On the second day of the Easter feast they had arrived at Saltillo, namely, twenty soldiers of the two presidios of Vizcaya which are nearest Coahuila, i. e., Cuencame and El Gallo. And the sargento mayor of Vizcaya, Juan Bautista Escorza, appointed a mulatto named Martincho So-and-so leader of the ten men he sent. The captain of the presidio El Gallo, a native of Vizcaya whose name was Ogalde, sent as leader of his ten soldiers Joseph de Salcedo, a Spaniard. While they were in Saltillo, a town inhabited by Spaniards, one of Martincho's men had words with Captain Anchiondo, and the Alcalde Mayor, D. Alonso Ramos, nephew to the president of Guadalajara, tried to seize him, but could not, because the said soldier and his companion decamped and went off where their camp was stationed on the hacienda of Capt. Nicolás de Guajardo. Thither the said Alcalde Mayor followed them. He arrived close behind them, and spoke very politely to the leader of the said soldiers, and the said Martincho agreed to take along the soldier next day in order that he might make it up with Captain Anchiondo. They went next day, and on the arrival of the said leader with the soldier at the government houses, it happened that the Alcalde Mayor received word concerning a christening to which he was invited. He said to the soldiers: "Wait for me a while, I shall soon be back"; and so on his return the difference existing between the two men was settled, and they made friends. But next day a tale-bearer—they are numerous in the town of Saltillo—did not fail to tell Martincho that the Alcalde Mayor said that he would find means to punish the Vizcayan soldiers, and that when he was away at the christening he had left them as prisoners in the government houses. At this Martincho took offense, questioning whether the Alcalde Mayor had jurisdiction over military cases, and he made a complaint. He

¹⁶The writer here begins with a direct narration, in the first person; he very soon, however, though very naturally and almost unconsciously lapses into what is rather indirect narration. For convenience the latter plan has been adopted throughout this episode in the translation. Cf. original.

called four of his soldiers, whom he took with him, saying to them that if they were not men, and intended to flee, they should not accompany him. Finally they went to the government houses, and Martincho left the four soldiers at the door, and, without giving warning, he entered the hall, and gained access to the room where the Alcalde Mayor was with a priest from Coahuila. On entering he drew his sword and dealt the Alcalde Mayor a stroke, taking off a considerable piece from his head, and cutting off one of his arms so as to leave him crippled, and to a mulatto who sought to help his master he gave a back-handed blow which split his head. The priest took away Martincho's sword, and just then the inhabitants of the place came crowding up to the door to assist the Alcalde Mayor. The soldiers who were keeping guard would not allow them to enter, but the crowd afterwards came in through the corral. It was then about ten o'clock in the morning. Martincho departed, he and his companions getting upon their horses and returning to the camp which he had established at the house of Guajardo. All the men of the town followed with weapons in pursuit, and after much dispute, Martincho having offered resistance in the said house, he allowed himself to be seized because the holder of the warrant, Gerónimo Montés de Oca by name, assured him that his life was safe. This occurred on the Thursday after Easter; that night the Alcalde Mayor himself passed sentence on him, and he received the notification in bed. The sentence was that he should be shot according to military usage, and on the next day, Friday March 21st, in the year '90, Martincho was shot on the plaza at Saltillo.¹⁷

This news the Vizcayan soldiers brought us as their excuse for not having arrived in time to set out from Coahuila with us.

These soldiers of whom I have spoken as arriving on that day were three that came on on the same trail while the others were following slowly, driving their horses, which were in a very bad condition. So six soldiers were sent with a load (*carga*) of flour to meet them, and Capt. Alonso de Leon and myself with fifteen men set out in a northerly direction for the San Marcos river, in order to try to find some Indians, burning fires day and night to see whether they would be answered by others. We spent six

¹⁷As is intimated in the next sentence, the account given by the newly-arrived soldiers, which is inserted so as to break into the narrative, closes here.

days in this sea-region without being able to find a single Indian. We crossed the San Marcos river on the Feast of the Cross, May 3rd. The next day, as we were still traveling north, it being already late, about five o'clock in the afternoon, all of us weary now with the seven days' journey, we saw some buffaloes, and the soldiers went out to kill something for supper that evening. I remained with a son of Captain Leon, and as we were walking directly forward, at the report of a gun an Indian woman came out of a thicket, and looking by chance to the left, I saw an object in the distance; it was impossible to tell whether it was an Indian or a tree, but on watching closely to see whether it was moving I saw another and a smaller object issue forth, from which it was evident that they were both Indians. Leon's son and I set out towards them, and when we had come closer I waved my hat to them, whereupon they fled, making for the thicket. Just then Captain Leon arrived with some soldiers, and we went up to the thicket and could not see or find any Indian; we did find some buffalo hides set close to a tree so as to make a shade, also a great quantity of buffalo meat, dried as well as fresh, three wild turkeys that were roasting, and buffalo tongues and udders, very fine, like hams. Nothing was taken away from them, nay, more, we left them a bunch of tobacco, some small knives and some ribbons, and went away. We slept that night on a little hill a couple of gunshots away from that place, the soldiers keeping a careful watch. At about nine that night, I noticed that the fire of the Indians grew brighter, and then I said to Captain Alonso de Leon: "Either these Indians are numerous, and therefore they fear us not, or those that are here, seeing that we have taken nothing from them, but, rather, left them more, are good people and desire to be at peace."

In the morning before sunrise I called the Quems Indian, and told him that we would try to ascertain whether those Indians were few or many, whether they were willing or not to be friendly, and to what nation they belonged. The Quems replied, as usual:—"Father, what you desire me to do shall be done." Then I gave a soldier the order to take off the armor he had on, bidding the Quems Indian wear it, and I had a good horse given to the Indian, and said to him:—"See here! if the soldiers go to visit the Indians, perchance these will be afraid, and flee; it will be better for you alone to go to reconnoitre. If one of them comes out peaceably to meet you, tell

him to come forward, for we are not here to take away from them what they possess, or to hurt them; on the contrary, we wish to be their friends, and help them to our utmost." As the said Indians came forth Captain Leon and his soldiers mounted their horses to be ready to assist our Indian in case the others should be numerous and should try to kill him. The Quems Indian came near the place where we had seen the Indians, and soon one of them came out towards him. The Quems waited for him, and they spoke at great length. And our Indian told him by signs—this being the most usual language—not to be afraid, and that he might safely come to us, for we were good people, and the Indian, seeing the Quems painted like himself, believed all that he told him, and the two came on together. After we had talked by signs a long time to the aforesaid Indian, he led us to his "ranchito" and we found his wife and a boy about ten, and there were no other people. These were of the Tejas nation, and had come to hunt buffaloes and carry the meat to their village. Soon we arranged for the transportation of the meat they had, and charged the man to take word to their governor, telling him that we were waiting for him at the very spot where we had found them. At noon we sent them forward, and returned for the night to the spot already referred to, where we had found these Indians. This place is at a distance of thirty leagues, rather more than less, from the village of Tejas.

The next morning four soldiers were sent out to the main body of the army to take a message, giving them the order to come and join us, as we were waiting for them at that place. By this time the provisions were consumed, and we were living simply on roasted meat. The next day at about five in the afternoon the Indian whom we had sent out appeared with his wife and the boy, in the same place, and on our asking him how it was that he had not gone on to his settlement he told us that his horse had run away from him that night, that he had left the meat hanging on a tree, and that he had come near to us to try to catch the horse. They slept with us that night, and the next morning we held a consultation as to whether it might not be that other Indians had come with him, and he was acting as a spy; with this in view it was resolved that four soldiers should examine the country around for about three leagues and see whether there were Indians or tracks of any kind. About three leagues away they found an Indian, a very tall

youth, on an excellent bay horse; the Indian was hunting buffalo, and though he was by himself he began to raise a hue and cry as soon as he saw the four soldiers, riding around as if he had no fear. The soldiers drew near him without exposing their guns or making any show of fight, and they made signs to him that he should come with them. And they brought him, and we gave him of what we had, and told him that if he would go with a message to the governor of the Tejas, we would give him a horse. As soon as the other Indian whom we had first sent saw that another man was going with the message, he asked for a good horse, and said he would go, and leave his wife and boy for us to take care of until he returned with the governor. So we sent him, telling him to light fires along the road by which they should come, and that we would answer by the same signal.

After four days, our company reached the San Marcos River, and came upon the Indians of the "ranchería" Emat, Too, Toaa, and others, and these Indians said that further along there were other Indians, and with them two Frenchmen. Leon, remaining with a few soldiers, sent for them, and they came. The one was named Pedro Muñi, a Creole, from the city of Paris, the other, Pedro Talo, a Creole, from New France; these had their firelocks, a sack of powder, and shot; more than twenty reales of the lowest value,¹⁸ in silver, Spanish money, and eighty gold eight-dollar doubloons, French money. After the doubloons had been passed from hand to hand, there were only thirty-nine left. One of the two Frenchmen mentioned, P. Muñi, must have been about twenty years old; the other, Pedro Talo, eleven or twelve.

The main body of the soldiers reached the place where we were, and the day after they came Captain Leon arrived with the two Frenchmen. There came also to that spot an Indian who was thoroughly acquainted with the road into the country of the Tejas, and he showed us the way until we met with the governor of the Tejas, together with fourteen or fifteen of his Indians, and the Indian whom we had sent to him with our message. It was about ten o'clock in the morning when we came upon them by an

¹⁸The "real sencillo," or "real of least value" (for this name is given to coins differing in value), is worth about 6 cents in our money.

arroyo in which they were bathing, and, on account of the thick woods, they did not see us until we were very close to them. As soon as the governor saw me, he came forward to embrace me; we sat down to talk by signs—this being the most usual mode of communication in those regions; and he produced a small sack of powdered tobacco, of the kind which they grow, and another small sack of pinole,¹⁹ white, and of very good quality. After talking we left the place, and went to rest a while. That night it was arranged to provide the governor with garments, in order that he might enter his village clothed, so that his people might see how highly we thought of him.

Three days later, on Monday, May 22, 1690, we entered the village. It was raining heavily on our arrival. That year it had, up to that time, rained but little, and already the corn was suffering from the drought, but every day of the eleven that we spent in the village it rained very hard.

At evening on the day of our arrival, the governor being in the tent with us, an old Indian woman brought him for his meal a large earthenware vessel full of cooked frijoles, with ground nuts and tamales. That evening the governor said that he would spend the night with us in the tent, and take us to his house next day, but afterwards, it being already late, Captain Leon insisted that they should go at once, as he had some skirts and other articles of clothing which he wanted to take to the governor's wife. The governor replied that he did not want to go then, but would go next day; however, in spite of all, he was obliged against his will to take Leon to his house.

On the next day the governor said that he wished to take us home with him, and that we might live in his house, in which, he said, there was room for all. After dinner we, the priests, discussed what should be our conduct on visiting at the governor's, and whether it would be advisable to stay there. My opinion was that we four priests should go on foot, carrying our staffs, which bore a holy crucifix, and singing the Litany of our Lady, and that a lay-brother who was with us should carry in front a picture on linen of the Blessed Virgin, bearing it high on his lance, after the fashion of a banner.

¹⁹The "pinole" is parched corn, ground or crushed. It is, I have heard, used to prepare drinks.

We set out in this manner for the governor's house from the place where we had stopped, and this pious conduct proved so blessed that, although it had rained heavily, and the water stood high all along the road where we had to pass, so high, indeed, that for the greater part of the way it came nearly to our knees, yet our fervor was such that we paid no attention to the water. Following the example given, some of the soldiers who were walking through the water became animated with such zeal and ardor that they could not keep back tears of joy and gladness. Among those who thus especially exerted themselves, giving no heed to the water or to the mud, were Capt. Francisco Martinez, D. Gregorio Salinas, and others. The rest, some twenty soldiers, were on horseback, and Capt. Alonso de Leon was with them; we who walked were in their midst.

We came to the governor's house, where we found a number of Indians—men, women, and children. Kneeling, we concluded the Litany, and we blessed the house. Soon the governor and the other Indians came up to kiss my robe, and the former bade us enter, in order to look at his house. The house is built of stakes thatched over with grass, it is about twenty varas high, is round, and has no windows, daylight entering through the door only; this door is like a room door such as we have here. In the middle of the house is the fire, which is never extinguished by day or by night, and over the door on the inner side there is a little superstructure of rafters very prettily arranged. Ranged around one half of the house, inside, are ten beds, which consist of a rug made of reeds, laid on four forked sticks. Over the rug they spread buffalo skins, on which they sleep. At the head and foot of the bed is attached another carpet forming a sort of arch, which, lined with a very brilliantly colored piece of reed matting, makes what bears some resemblance to a very pretty alcove. In the other half of the house, where there are no beds, there are some shelves about two varas high, and on them are ranged large round baskets made of reeds, (in which they keep their corn, nuts, acorns, beans, etc.), a row of very large earthen pots like our water jars, these pots being used only to make the atole²⁰ when there is a large crowd on the

²⁰This is a kind of gruel, of varying consistency, made by cooking pounded maize or rice, in water or milk. Probably maize is the grain meant here.

occasion of some ceremony, and six wooden mortars for pounding the corn in rainy weather, (for, when it is fair, they grind it in the courtyard).

After a little while they brought out to each of us in the patio a small wooden bench very skilfully fashioned, and after we had been through the house we sat down there, for the patio was bright and cool. Then they brought us a lunch consisting of the tamales they make, with nuts, pinole of corn, very well prepared, a large crock full of corn cooked with frijoles, and ground nuts. Soon I noticed, outside the patio, opposite the door of the governor's house, another long building, and no one lived in it. I asked who dwelt therein or what purpose it served, and was told that the captains were lodged in that house when the governor called them to a meeting. On the other side I saw yet another and smaller vacant house, and upon my inquiring about this one they answered that in the smaller house the pages of the captains were lodged, for the law provides that each captain shall bring his page when the governor assembles the captains, according to the custom which they observe. As soon as they arrive they are lodged in that house, and for each one is laid a large, brightly colored reed mat, on which they sleep, with a bolster made of painted reeds at the head; and when they return home, each one carries with him his mat and pillow. While they attend the meeting the governor provides them with food, until he sends them home.

The following are the domestic arrangements in the governor's house: each week ten Indian women undertake the house-work; each day at sunrise these women come laden with firewood, sweep out the patio and the house, carry water from an arroyo at some distance—(for this water is very good, and though the river is close by, its water is not as good as that of the arroyo)—and grind corn for the atole, tamales, and pinole. Each one of the women goes home for the night, returning next morning. In the governor's house I saw a little wooden bench in front of the fire, and the Indians admonished me not to sit upon it, lest I should die. I was curious to learn what mystery there was connected with it, and they told me that no one but their lord the governor, might sit upon that stool.

As to whether the priests should live in the governor's house, it seemed to me unadvisable that they should do so, on account of

the number of Indians, men and women, who went in and out at all times. Using the Frenchman as an interpreter I told the governor with many kind expressions that his house was very fine, and that I heartily appreciated his desire to have the priests in his household, but that since we had to build a house for the celebration of masses, it might be well to build likewise a dwelling for the priests, because they must needs live near the church. Thereupon the governor said that we should build the house in the most suitable place, that he would show us the village and that I might choose the spot. We agreed to visit the village on the following day in order to look for a favorable location for the church and the priests' dwelling; accordingly next day we went with the governor, who took us to the place the French had selected for their settlement, pleasantly and favorably situated on the riverbanks. We did not locate the convent there because it was so far out of the way of the Indians. Just at that spot they showed us two dead bodies of Frenchmen who had shot each other with carabines. All this day we were unable to find a place which suited me.

The next morning I went out with Capt. Alonso de Leon a little way, and found a delightful spot close to the brook, fine woods, with plum trees like those in Spain. And soon afterwards, on the same day, they began to fell trees and cart the wood, and within three days we had a roomy dwelling and a church wherein to say mass with all propriety. We set in front of the church a very high cross of carved wood.

On the feast of Corpus Christi mass was sung, and before mass we had a procession with the holy sacrament exposed, a large concourse of Indians being assembled, for we had notified them the day before. The soldiers had been given leave to fire as many salutes as they could during the procession, at the elevation, and at the close of mass, and by the will of the Divine Majesty we celebrated in that solitude a memorable feast, which was rendered a source of great consolation by our being able to carry the blessed sacrament exposed and to walk in procession as Christian Catholics are wont to do. After mass we hoisted in the name of His Majesty the royal standard bearing on one side the picture of Christ crucified, and on the other that of the Virgin of Guadalupe. A royal salute was fired, and we sang the *Te Deum Laudamus* in thanksgiving.

These Tejas Indians have always had among them an old Indian who was their minister, and presented their offerings to God. They observed the custom never to taste any eatable without first taking a portion of it to their minister for sacrifice; they did this with the produce of their lands—as corn, beans, watermelons, and squashes—as well as with the buffalo meat they obtained by hunting. This minister had a house reserved for the sacrifices, and they entered therein very reverentially, particularly during a sacrifice. They never sacrificed to idols, but only to him of whom they said that he has all power and that from him come all things, which is recognising a first cause.

The captains as well as the governor himself, all treat this minister with much consideration, and in order to induce him to visit us, as well as to avoid hurting his feelings, the governor sent out the captains with orders to do honor to the Indian priest and bring him with them. They went, and during three days and nights they entertained him with songs and dances, as is their custom, and then they returned home, bringing him. They arrived at noon, just as we were about to have dinner. Since I was eager to see the ceremonies of these people, I suggested that we should wait for that priest of theirs and ask him to eat at our table. He came advancing slowly, and bearing himself with much dignity, and with him was a crowd of Indians, men, women, and children. He appeared extremely serious and reserved, and, as soon as he reached the place where we were the governor bade him kiss our robe. This he did, and when we sat down to dinner I asked the governor to let our visitor sit by his side.

When this Indian priest took his first mouthful, instead of asking a blessing, he made with the food, as he took it out of the dish, a sign like that of the cross, pointing, as it were, to the four winds, or cardinal points. After dinner we gave him clothing for himself and his wife, and he was well pleased.

Later we were told by an Indian who was then with the Tejas but came from the country beyond—from Coahuila—and who spoke Mexican, that the abovementioned priest of the Tejas had told all the captains and other Tejas:—"Now you will no longer heed me, for these priests who have come to you are the true priests of Ayimat Caddi"—which name signifies, in their language, "The Great Captain." This was the name he gave to God,

for since the only rank or title they know is that of captain, they call "Great Captain" him whom they consider as great above all things. Similarly, in order to give the governor a distinguishing name other than that of captain, since there are other captains, they call him "desza," which means "Great Lord and superior to all."

When the church and the dwelling intended for the priests had been finished they carried into these buildings all that was to be left for the priests, and on the morning of the first of June, the octave of the feast of Corpus Christi, we consecrated the church and celebrated mass, after which the *Te Deum Laudamus* was sung in thanksgiving, the soldiers firing a royal salute. The church and village were dedicated to our Holy Father St. Francis.

After dinner on that same day our company left the place, to return hither, but I remained until the next day, when I went to join the others on the way. The night before I left the place I called the governor, bidding him remember that he must take care of the fathers who remained there and try to cause his people to respect them and to receive the Christian doctrine. I told him the fathers would not take anything away from them, nor ask them for anything, but rather help them whenever they were able. And the governor said: "I shall take care of the fathers, so that, when you return, they will have no complaint to bring against me; they are perfectly safe, and may remain." I then told him that I should be gratified if his brother and some other one of his relatives would come with me to visit our country and bring back numerous presents for those who remained at home, and that our great captain the Viceroy was anxious to see them, and entertained very kindly feelings towards them. The governor then replied that his brother with two other relatives and a nephew of his would accompany me, and he thus admonished me:—"Do not permit anyone to demand service from these men whom you take with you, nor to make them work." From these words of his it is evident that they have among them the idea of rank, and that they distinguish their nobles from the mass of the people.

From the time of our arrival at the Tejas village until we left I took note of some things and gained experience concerning some men whose conduct proved so different from what it had seemed to be when we were on the road, that I hardly knew them for the same persons after we were in the village. Evidently some of them

thought that they were to be made rulers of the Tejas, and forgot His Excellency's express orders concerning the journey, which orders provided that Capt. Alonso de Leon should go as commander of the expedition to find out whether there were any Frenchmen in that region, and that Leon and his men should escort thither the priests who accompanied Fray Damian Mazanet. If the Tejas asked for priests and desired baptism, the priests were to remain there. And if the Tejas proved quite friendly and no danger was to be expected at their hands, no large garrison was to be left behind; if, on the other hand, they proved troublesome, as many soldiers should remain as seemed needful, according to the advice and with the consent of Father Fray Damian Mazanet. It was at no time necessary for the safety of the priests to leave soldiers among the Tejas, for from the very first they welcomed us with so much affection and good will, that they could hardly do enough to please us. Yet, in the face of all this, Capt. Alonso de Leon made arrangements to leave fifty men, under the command of Capt. Nicolás Prietto, an incapable and undeserving old man.

When the time came, the captain told me of his purpose in a private interview, and I replied:—"You are under orders from His Excellency, and if you mean to consult with me, the consultation must not take place in private; call your captains and in their presence and in that of the priests state what you wish to offer for consideration." This reply deeply wounded Leon, for his passions had blinded him. He called the captains, and I called the priests, and Capt. Alonso de Leon told us that he had planned to leave for the protection of the priests forty or fifty soldiers under a leader, and that he was holding this consultation because His Excellency had ordered that, if soldiers were to be left, it should be with my consent. To this I replied that there was no necessity at all to leave a military force in the district, since the people were so peaceable and so friendly. In case the priests should need assistance, I requested that three soldiers whom I thought fit for the position should stay there. If he chose to leave a greater number, well and good; but with no consent of mine, for I did not wish more than three to remain. Leon was much taken aback on account of what he had planned and discussed with his compadre Capt. Nicolás Prietto, who was to remain as leader of the forty or fifty soldiers. However, in the end, it was arranged that the three soldiers recommended by me should remain there. They were willing to do so,

and were quite content. They belonged to the Zacatecas company. Leon left for the soldiers nine of the king's horses, firelocks, a barrel of powder and some shot, and for the priests he left twenty-six loads (*cargas*) of flour, twenty cows, two yoke of oxen; ploughs with ploughshares, axes, spades, and other little necessities.

On the 2nd of June we took our departure, and the priests walked with us a little way out of the village. Then we took leave of one another with many tears of joy, and gladness, for these men did not sorrow at being left behind, nay, rather, they gave thanks to God for having merited such a grace as to be called to save the souls of the heathen. We arrived at the Trinity on the 3rd of June, and found this river very high. On this account we were kept for a week from crossing. Meanwhile the governor's brother was taken ill and went home. After a week they made a raft of logs, on which the packs, the clothing and all other baggage were taken across, while the horses were driven through swimming, some few getting drowned.

We followed the road by which we had come, until we reached the "ranchería" of the Emat, Toaa, Too, Cavas, and other Indians, and in this "ranchería" we heard that the Indians on the coast had captured some young Frenchmen. The captain of the "ranchería" told us that although they themselves were at feud with the Indians on the coast, yet there was among them an Indian who held intercourse with those others, and if some of us desired to go and find them, this Indian would take those who wished to go. Captain Leon decided to go with twenty men for the purpose of trying to rescue the said young Frenchmen. They reached the coast of the bay and found the Indians whom they sought. These had just arrived from some other portion of the same coast, armed with lances, and soon our people began to treat with them, about delivering up the young Frenchmen. The Indians were promised horses and clothing if they would give up the boys, and their reply was that they would do so promptly, and very willingly. The soldiers then began to enter the "ranchitos" of the Indians, peering with too much curiosity into their belongings, and committing other acts so that the Indians became resentful against the soldiers and distrustful of them when they found out who was guilty. Later, all being gathered together after the French boys had been delivered over to our men, the Indians commenced to shoot arrows among

the soldiers. Two arrows struck Captain Leon in the side, but as he wore mail, they did not penetrate; also, the horses were shot down under two other soldiers. There were four Indians killed and two wounded, and our men took the young Frenchmen and returned to the main body of the army, which was waiting by the Guadalupe river.

We returned by the way we had come, and, arriving at the Rio del Norte, found it so high that we were kept from crossing for 18 days, and when we did get across it was by swimming, at great peril to our lives. The river current carried off many articles of clothing as well as horses, and one soldier, who bore among his comrades the ill name of Judas, was drowned. This man had the reputation of being likely to appropriate what belonged to other people, and on the morning of the day he was drowned he returned to one of the mule drivers a boiler he had stolen, saying:—"Forgive me, friend, for I stole this boiler from you." And when he entered the river to cross, he said:—"Let us hurry in, for this is the last time." When he was in the middle of the river he disappeared, he, the horse, and all he was carrying, and he was never again seen. Just at the time when he disappeared there arose a high wind which terrified us, and the waters of the river grew so angry that they seemed about to leave their bed.

There were some points of which I took special note on this journey. First, in the preceding year we had everywhere found Indians, while in the year '90 we saw not a single one, until we inspected the bay of Espiritu Santo and entered the land of the Tejas.

Secondly, in the year before the soldiers all behaved in a peaceable, orderly manner, performing their duties faithfully, so that there was no disorder on the march, and no loss of horses. But in this year '90 there hardly passed a day without some one fighting or else the officers stabbing soldiers, so that a lay-brother who had come with me was generally kept busy tending the wounded. He treated them with tepid wine, which is, they say, an excellent cure for stabs in the head.

Thirdly, I noted that there were so many horses and mules that the laden mules were not missed until some article contained in their pack was needed. As to the number of horses, it was never known to the officers.

Fourthly, Captain Leon had a *compadre* along, Captain So-and-So, so honorable that he never failed to play the tale bearer and excite quarrels; so kind-hearted that only his friend Leon drank chocolate, and the others luke-warm water; so considerate of others that he got up early in the morning to drink chocolate, and would afterwards drink again with the rest; so vigilant that he would keep awake and go at midnight to steal the chocolate out of the boxes; perhaps this vigilance was the reason why, while, by order of His Excellency, Captain Leon should have left for the priests three hundredweight of chocolate and the same quantity of sugar, he left only one and one-half hundredweight of each.

This same *compadre* is so smooth-tongued that he told me once:—"In truth, in truth, since the time of Cortes there has not been in the Indies another man who can be compared with my *compadre* Gen. Alonso de Leon." This aforesaid *compadre* is so compassionate towards the Indians that because he saw how poor they were, and that their only clothing was the skins of antelopes and buffaloes he endeavored to give them in secret the articles which His Excellency had sent for them—e. g. blankets, flannel, cloth and knives—but the *compadre* so arranged his almsgiving, by first robbing the Indians of what they had, that his gifts were equal to about one-fourth of what he took.

Fifthly, when the Indians brought some complaints against the soldiers for entering their houses, Captain Leon never attempted to remedy things at all. In one particular case, when the brother of the governor of the Tejas came to us, complaining that a rape had been attempted on his wife, I asked Captain Leon how he could tolerate such misdeeds. I urged that conduct like this, which would not be tolerated even among Moors or heretics, should be the more severely reprov'd because we had come among these heathen people in order to give an example of right living. Leon did not say a word—perhaps because he feared exposure.

For lack of more time I shall now only add what is the most noteworthy thing of all, namely this: While we were at the Tejas village, after we had distributed clothing to the Indians and to the governor of the Tejas, the said governor asked me one evening for a piece of blue baize to make a shroud in which to bury his mother when she died; I told him that cloth would be more suitable, and

he answered that he did not want any color other than blue. I then asked him what mystery was attached to the blue color, and he said that they were very fond of that color, particularly for burial clothes, because in times past they had been visited frequently by a very beautiful woman, who used to come down from the heights, dressed in blue garments, and that they wished to be like that woman. On my asking whether that had been long since, the governor said it had been before his time, but his mother, who was aged, had seen that woman, as had also the other old people. From this it is easily to be seen that they referred to the Madre María de Jesus de Agreda, who was very frequently in those regions, as she herself acknowledged to the Father Custodian of New Mexico, her last visit having been made in 1631, this last fact being evident from her own statement, made to the said Father Custodian of New Mexico.

Translation of note on back of MS.

On the 30th of September in the year 1709 there was an earthquake in the port of Vera Cruz, and as a result of the adverse winds eleven vessels sank and were destroyed, and several houses fell. It is said that this catastrophe caused a loss of more than three hundred thousand dollars.

THE BATTLE OF GONZALES, THE "LEXINGTON" OF THE TEXAS REVOLUTION.

MILES S. BENNET,

Captain Company E, Texas Ex-Rangers Battalion.

On the fourth of July, 1838, at Gonzales, I met at a festive occasion some of those who had been prominent in the defense of that town and its brass cannon in 1835; and associating with them and others for many years afterwards I had opportunities for hearing from them narratives of stirring incidents of that period. Although these incidents were considered of small importance at the time, I like to recall them and place them on record, that they may not be completely forgotten.

In company with my father, Major Valentine Bennet, who had actively participated in those scenes and who was one of the first officers commissioned at Gonzales by General Stephen F. Austin, I went to some of the places of the vicinity made historic by the movements of the colonists and the events of the battle and retreat, notably the celebrated mound (De Witt's) where the Mexicans encamped; also, the prairie bluff below the town watering place just above where the timbered bottom begins, the place where the cannon was thrown into the river when the town was burned by the retreating army, and the stricken inhabitants terribly weakened by the slaughter in the Alamo of forty of their men, were constrained to abandon the place and try to save themselves in the disastrous flight known as the "Runaway Scrape." It occasioned melancholy feelings to view the ruins of the burnt town, which had evidently been quite a thriving little city, having comfortable two-story dwellings, storehouses said to have been stocked with valuable goods, a cotton gin and mills, and a brick yard, and was able to boast of a regular city incorporation.

My father was acquainted with the circumstances attending the beginning of hostilities at Gonzales, he having located there with some colonists in 1832. He had been in feeble health, having been severely wounded in the battle of Velasco in June of that year. He had been acquainted with the forty citizens who had ridden to

the front and fought and fallen in the Alamo a few days before the time when Gonzales, being deprived of so many of her protectors, was also wantonly sacrificed to the flames. The memory of those heroes of the Alamo should ever be cherished by our people. I record here the names of some of those who went from Gonzales: Capt. Albert Martin, George W. Cottle, Almerion Dickinson, William Dearduff, James George, John E. Garvin, Thomas Jackson, George C. Kimble, Andrew Kent, William King, Jacob C. Darst, William Fishbaugh, Thomas R. Miller, Jesse McCoy, Isaac Milsap, Isaac Baker, John E. Gaston, Robert White, Galby Fuqua, Amos Pollard, John Cane, Dolfin Floyd, Charles Despalier, Claib. Wright, George Tumlinson, Johnnie Kellogg. I became acquainted with the survivors of some of the families of these men after their return to the Guadalupe.

The colonists of DeWitt's settlement had in 1831 been furnished for their defense against the Indians a brass six-pounder which was kept at Gonzales. From rumors that had been heard, the apprehensions of the settlers were excited; and, when in the latter part of September 1835 Colonel Ugartechea commanding the Mexican forces at San Antonio sent a small troop of cavalry with an order for the delivery of the piece, it was resolved by the inhabitants not to give up the gun. The order was directed to Andrew Ponton, the alcalde, and Wiley Martin the political chief at Gonzales, and was brought by Lieutenant Castañeda, who had ten men and an ox cart to carry away the unmounted cannon. In order to gain time the citizens delayed the Mexicans with evasive answers two or three days, in the meantime sending Matthew Caldwell to the Colorado and Washington for re-inforcements. They also secreted the ferry-boat in the slough branch in the timber bottom above town, and the first day mustered eighteen men whose names are as follows: Capt. Albert Martin, Jacob C. Darst, Winslow Turner, W. W. Arrington, Graves Fulchea, George W. Davis, John Sowell, James Hinds, Thomas Miller, Valentine Bennet, Ezekiel Williams, Simeon Bateman, J. D. Clements, Almerion Dickinson, Benjamin Fuqua, Thomas Jackson, Charles Mason, Almon Cottle.

Afterwards when I became acquainted with some of the survivors of this little band of eighteen and heard their narrative of this part of the history, I noticed with what honest pride they referred to it, and the gratification of being able to say, "I was one of the 'Old Eighteen' defenders of Gonzales."

Some of the families secreted themselves in the timbered bottoms. Jesse McCoy, Joseph Kent, Graves Fulchear, and W. W. Arrington kept watch at the river. Mr. Kent told me afterward how he and Fulchear in their hiding places could scarcely resist the temptation to shoot at the Mexicans as they came to the opposite bank to water their animals. Texian scouts were sent out in the direction of San Antonio, as it was known that the Mexicans encamped at DeWitt's Mound had sent couriers to the west, and that probably they had been informed by a half friendly Indian who had been loitering about the town of the preparations made there for defense.

The naked cannon was at first buried in Geo. W. Davis's peach-orchard, the ground being plowed and smoothed over. Then a broad-tired ox-wagon was fitted up and the gun raised and mounted upon it, Mr. Darst, Jno. Sowell, Dick Chisholm, and others working diligently at it. Mr. Chisholm afterward narrated to me how he and Mr. Sowell (both of them blacksmiths) managed to prepare shot for the cannon cutting up pieces of chains and forging iron balls out of such scraps as they could procure.

In the short space of forty-eight hours Matthew Caldwell returned from the east with help. Upon the arrival of Mexican reinforcements, increasing their number to about two hundred, their Lieutenant, Castañeda, with a troop, was sent with despatches directed to the alcalde of Gonzales, but could not cross the Guadalupe as the boat had been secreted. The officer was told that alcalde was not in town, but that a messenger might swim over with the despatches without molestation which was immediately done.

The Texian force, now increased to about one hundred and fifty men, organized under the command of John H. Moore and drilled diligently, the Ferry-boat was returned to its landing, and a message sent to the Mexican commander that the alcalde had returned to Gonzales and invited him to come over and get the cannon. Upon hearing this the officer, shrugging his shoulders, replied "I suppose I need not go if I do not want to."

The enemy started on their return to San Antonio, marched about seven miles, and encamped for the night at Ezekiel Williams's place, which they robbed, supplying themselves with many sacks of watermelons.

On the night of Oct. 1st the Texians crossed the river with their cannon, and forming held a council of war, and listened to a patriotic address from Rev. W. P. Smith, a Methodist preacher of Rutersville. Then they marched up the river several miles, and towards morning on Oct. 2d, a dense fog prevailing, their pickets encountered the mounted pickets of the enemy, and a ludicrous firing and scattering ensued, neither force being able to distinguish friend from foe. The Texians, however, were annoyed by a little dog that ran among them, betraying their position. A little lifting of the fog showed the Mexican encampment, and an American known as Dr. Smithers came out calling, "Don't shoot, don't shoot. I have a message;" but the colonists firing their cannon charged up and put the Mexicans to flight, capturing many of the camp equipments. My father told me that the roar of the cannon loaded with cut up pieces of chains, reverberating along the valleys and river in the early morning, was remarkable. Some blood was seen, and crippled animals were left on the battle-ground.

In the division of the camp spoils my father procured an excellent Spanish blanket that was of great value to him in the following campaign, in which he took an active part. Remaining with the troops, he was requested by Gen. S. F. Austin to drill the men, and was appointed lieutenant, being among those first commissioned at Gonzales. He was at the battle of Concepcion on Oct. 28th, and he afterwards took me over that battle-ground, showing me the positions of the troops. He also received from General Austin the appointment of assistant quarter-master general, as is seen from Scarff's *Comprehensive History of Texas*, Vol. 1 page 541, where the surname printed "Baker" should doubtless be Bennet; and at the siege of Bexar he was complimented for his efficient services in that memorable campaign by the commander in chief, Gen. Ed. Burleson, whose Report may be found in the *History of Texas* by Jno. Henry Brown, Vol. 1, page 424.

BOOK REVIEWS AND NOTICES.

In the publications of the Southern History Association for April, Mr. Bugbee has an interesting article entitled *Some Difficulties of a Texas Empresario*, in which he sets forth those encountered by Stephen F. Austin in such a way as to bring into clear light the unfulfilled obligations of the State to this self-sacrificing and patient hero.

The appearance of the fourth volume of Gammel's Reprint of the Laws of Texas will be noted with general satisfaction. Extending from Austin's colonization to the adjournment of the Twenty-fifth Legislature, this publication involves a large outlay in time and money, and by some the undertaking at its inception was thought a bold one. But the increasing interest and demonstrated value of the work give good assurance of its success. It is very valuable to the student of history and to the Texas lawyer, as it brings within ready access the sources of original information as to the development and changes of our institutions and laws.

Volume 4 opens with special laws of the Fifth Legislature (November 7, 1853), and closes with the Constitution of the Confederate States, adopted March 11, 1861. During these years growth was rapid and changes great. There was then no prohibition in the Constitution regarding private legislation, and more than half the laws enacted were of that nature. All private corporations were then created by special acts, and it is to these private or special laws that the inquirer must go to acquaint himself with the growth of corporations in our State. At one session of the Fifth Legislature acts were passed for relief of more than 200 individuals.

Among the curiosities in this volume is a special law of the Legislature entitled "An Act to incorporate the Terraqueous Transportation Company," a private corporation to continue for 100 years, and whose business it was to construct and operate certain

amphibious vehicles designed to "traverse equally the land and the sea, passing," with ease "from one to the other," recited to be equal on land to the most improved railroad cars and on sea to the best steam vessels. It would be interesting indeed to know the actual workings of this company and its vehicles.

Among the general laws of this period are many of the most important that have ever been enacted in Texas. Space forbids specializing. It is sufficient to say that many of the statutes now in force have come down to us without change, and others can not be properly understood and applied in their present form unless we go back to their first enactment and trace them through their several changes. This the lawyer or student who has Gammel's Reprint can readily and accurately do. JOHN C. TOWNES.

NOTES AND FRAGMENTS.

MRS. STERNE'S REMOVAL TO HOUSTON.—In THE QUARTERLY for January, 1899, on page 215, in my sketch of Captain Adolphus Sterne, occurs a misprint (if it be not a blunder of my own), in stating the date of Mrs. Sterne's last removal. It reads thus:

"Thence [from Austin], in 1874 or 1875, she removed with her daughter, Mrs. Ryan, to Houston, which was her last earthly home."

The correct statement of the date is "1894 or 1895."

W. P. ZUBER.

AUSTIN'S VIEWS ON SLAVERY.—Mr. Lester G. Bugbee, in his recent monograph, *Slavery in Early Texas*, says concerning Stephen F. Austin's views on the slavery question: "After the colony had been established on a firm basis, Austin thought that a sufficient number of slaves had been brought in, and so, from 1830, we find him in opposition to the further advance of the institution." Mr. Bugbee sustains his assertion by several quotations from Austin's letters; one, whose tone is very positive, reading thus: "I am of the opinion that Texas will never become a slave State or country. I will be candid with you on this point, and say I hope it never may."

Nevertheless, Austin's convictions were entirely changed before the Texas revolution; for, on his return from prison in Mexico, he wrote to Mrs. Mary Holly, August 21, 1835, saying: "*Texas must be a slave country. It is no longer a matter of doubt.*" The interest of Louisiana requires that it should be. A population of fanatical abolitionists in Texas would have a very dangerous and pernicious influence on the overgrown slave population of that State. Texas must and ought to become an outwork on the west, as Alabama and Florida are on the east, to defend the key of the western world—the mouths of the Mississippi." Touching the relations of Texas and Mexico, he continues: "Being fully Americanized under the Mexican flag would be the same thing in effect and ultimate result as

coming under the United States flag. A gentle breeze shakes off a ripe peach. Can it be supposed that the violent political convulsions of Mexico will not shake off Texas so soon as it is ripe enough to fall? All that is now wanting is a great immigration of good and efficient families this fall and winter. Should we get such an immigration, especially from the Western States—all is done; the peach will be ripe. . . . The cause of philanthropy and liberty also will be promoted by *Americanizing* Texas. I am right, therefore, to do so by all possible honorable means.”

EUGENE C. BARKER.

AFFAIRS OF THE ASSOCIATION.

This number of *THE QUARTERLY* has been greatly delayed by difficulties incident upon the execution of the fac simile of the Manzanet MS. We trust there will be no such delay hereafter.

In spite of the very best intention and effort, it is impossible to print as yet the promised indexes for Volumes I and II. They are almost ready and will be forthcoming soon. The fact is that the income of the Association does not yet justify adequate clerical help for the management. We feel sure that the members, and especially those who have not kept their dues paid up, will bear with us concerning the delay of the indexes.

It has been thought best not to publish the *Journal of Moses Austin* in this number. The members of the Association may expect, however, to have the pleasure of reading the *Journal* soon.

Recent valuable gifts to the Association are the rare pamphlet of Commodore Moore, published in 1843, in which he appeals from President Houston to the people, and which contains much important material relative to the history of the Texas navy; and a printed sheet containing the names, ages, places of birth, date of immigration, etc.. of the members of the Sixth Congress. The first was presented by Mr. L. N. Goldbeck, of Austin; the other by Hon. Beauregard Bryan, of Brenham. Mr. W. P. Devereux, of Jacksonville, Texas, has sent the Association two interesting old newspapers. One of these is the *New York Morning Post* for November 7, 1783; the other the *New England Weekly Journal* (published at Boston) for April 8, 1728.

The third annual meeting of the Association is to occur in Austin, at the University building, June 15. The program has been distributed among the members, and will speak for itself. Arrangements have been made with the railroads for a single fare for the round trip, and those who wish can attend the University commencement at the same time. These meetings do much to arouse and stimulate enthusiasm, and all that can possibly come are urged to be present.

The joint meeting of the Veterans' Association and the Daughters of the Republic at Temple on San Jacinto Day is said by the participants to have been an exceedingly pleasant occasion. The city entertained its visitors in royal fashion, and those who shared its hospitality are lavish in their expressions of gratitude. For resolutions which were passed commending the work of the Association are due our most sincere thanks.

INDEX TO VOLUME II.

Affairs of the Association.....	103-115, 181, 249-251, 321, 322
Agreda, Maria de Jesus de.....	255, 280, 282, 312
Aguayo, San Miguel de.....	164, 218, 254, 281
Agricultural and Mechanical College.....	57, 250, 253
Aguirre, Colonel.....	220, 221, 222, 224
Ahumada, Mateo	212
Alamo, The Name.....	245-247
Alarcon, Governor	219
Alexander, Robert.....	74, 78, 83, 124, 125
Allen, Wm. Y.....	81
Alsberry, Horatio	194
Amsler, Charles.....	172, 230
Anchiondo	267, 297
Anderson, K. L.....	4
Anahuac, Old fort at.....	21-28, 173
Andrews, John D.....	234
Annexation.....	6, 13, 31, 53, 88, 91, 120, 158, 159, 160
Annotated Revised Civil Statutes.....	86, 87
Arbitration.....	34, 37, 38
Archebepe, Juan.....	262, 291
Archive War.....	120
Armas, Ignacio Lorenzo de, 220; Martin Lorenzo de.....	220
Arthur, Dora Fowler.....	73
Arredondo, Joaquin.....	168
Arrington, W. W.....	314, 315
Arroyo, Arnuto.....	97
Austin, Moses.....	88, 101, 250, 321
Austin, Stephen F....	22, 88, 91, 101, 118, 152, 183, 212, 228, 237, 250,
.....	313, 316, 317, 319
Baker, Isaac.....	314
Ballinger, Judge.....	17
Bancroft, H. H.....	179
Banks' army.....	57
Barrett, Eva H. Eugenia.....	216
Bartels, ———	172, 203
Bass's Texas Regiment.....	75
Basterra, Juan Orobio y.....	165, 166
Bateman, Simeon.....	314
Batts, R. L.....	86
Battle of Gonzales.....	313-316

Index.

Baylor, R. E. B.....	5
Bee, Col. Barnard E., 54; Gen. Barnard E., 54; H. P., 54-57; Thomas..	54
Belding, W. G.....	233
Bell, James H., 8, 11, 12; Thomas, 127; ———	173
Bennet, Joseph L., 177; Miles S., 313; Valentine.....	314, 316
Benavides, Alonzo de.....	255, 282
Bermuda, Jose Maria.....	196, 198
Bernard, J. H.....	88
Berry, A. J.....	97
Binaz, Antonio.....	255, 282
Black, Consul.....	234
Blanco, Victor	204
Boehmen, ———	230
Borden, J. P.....	170
Bordoy, Antonio.....	265, 295
Bosticks, ———	170
Book Reviews.....	85-93, 240-242, 317, 318
Boundary	6, 55
Borrega, José Vasquez.....	166
Bowden, Frank.....	7
Bowie, James.....	101
Bowles	65, 213
Bowser, O. P.....	89
Bowyer, Colonel.....	234, 236
Bradburn, Juan David.....	21, 22
Briscoe, Andrew.....	23, 24, 25, 27
Brock, Jno.....	24
Brooks, Elizabeth.....	240
Brown, "Billy," 175; "Cabris," 175; "Dog," 175; John Henry, 28 316; "Mustang," 175; "Sheep," 174; "Waco".....	174
Bryan, Beauregard, 104, 321; Guy M., 88, 91, 95, 183, 237, 243, 250; Moses Austin.....	91, 183
Buchanan, James.....	56
Buchel, Col. A.....	57
Buckley, Constantine.....	8
Bugbee, Lester G.....	94, 96, 134, 240, 247, 317, 319
Burnet, David G.....	15, 42, 80, 101, 129, 153, 154, 160
Burnett, ———	229
Burleson, Edward.....	55, 57, 65, 88, 157, 243, 245, 316
Burton, I. W.....	157, 244
Bustamente, Anastacio.....	188
Cabeza de Vaca, Alvar Nuñez.....	95, 162
Caldwell, Matthew.....	176, 314, 315
Callahan, H.....	24
Camara Alta, Augustin Lopez de la.....	165
Campbell, Isaac.....	157

Index.

Canalizo	235
Cane, John	314
Caniegas, Sancho	98
Capistrano, Juan	262, 291
Capitals of Texas	117-123, 152-159, 243-245
Carbelo, Juan	219
Cartwright, Columbus	79
Casa Fuerte, Marquis de	221
Casis, Lilia M.	250, 253, 281
Castañeda, Lieutenant	314, 315
Cave, E. W.	216
Chapman, Ulysses	130
Chappell, Robert	124
Cherokee Nation of Indians	58-72, 213
Chilton, George W.	7
Chisholm, Dick	315
Chriesman, Commissioner	244
Civil Law of Spain	5, 29, 30, 32, 33, 36, 39, 43, 49, 52, 135, 144
Civil War	6, 14, 19, 27, 54, 55, 61, 67, 68, 75, 89, 96, 173
Clement, J. D.	314
Clark, ———, 83; Edward	56
Clay, Henry	75
Coke, Richard	17
Colfax, Schuyler	16
Colonist, Belated	237-239
Comanche Indians	55, 64
Commission of Appeals	149, 150
Common Law of England	5, 29, 30, 33, 36, 37, 38, 39, 40, 41, 43, 44, 48, 49, 50, 51, 52, 135, 137, 141, 142, 143, 144, 145
Comprehensive History of Texas	19, 87-93, 316
Congress Coahuila and Texas, 33, 34, 35; Mexican, 32, 33; Texas, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 53, 66, 74, 75, 76, 80, 81, 82, 104, 118, 120, 124, 127, 142, 154, 155, 156, 157, 158, 321; United States	6, 7, 12, 16, 33, 69, 70, 146
Constitutive Act of Federation	32
Constitutional Congress, Coahuila and Texas, 32; Mexican	32
Constitutional Convention, of 1845, 3, 159; of 1861, 14; of 1866, 145, 146; of 1868, 146; of 1875	149
Constitution, of Coahuila and Texas, 33, 34, 35; of Mexico, 32, 33, 38, 152; of Texas of 1836, 14, 41, 42, 43, 44, 45, 46, 48, 50, 118, 152, 154, 159; of 1845, 14, 53, 120, 135, 136, 137, 139, 140, 141, 142, 144, 145, 159; of 1861, 14, 145, 317; of 1866, 145, 146; of 1869, 16, 146, 147, 148; of 1876, 17, 147, 148, 149, 150; of United States	2, 3, 7, 33, 146
Consultation of 1835	26, 38, 39, 40, 50, 65, 117, 152
Convention of 1836, 40, 41, 42, 117, 152, 153; Secession, 3, 14, 15, 92, 121	
Cooke, Louis	157

Index.

Cooper, Wm.....	175	
Coopwood, Bethel.....	98, 162	
Corner, William.....	224	
Cos, Martin Perfecto de.....	25	
Cottle, Almon, 314; George W.....	314	
Court, Coahuila and Texas Supreme, 34, 35, 36, 135; Texas Appeals, 149, 150; Texas Civil Appeals, 150, 151; Texas County, 4, 44, 46, 47, 136, 138, 146, 149, 151; Texas County Commissioners', 47, 151; Texas Criminal Appeals, 150; Texas District, 4, 43, 44, 45, 46, 47, 48, 49, 136, 137, 138, 139, 140, 141, 142, 143, 144, 146, 147, 149, 151; Texas Justice, 4, 44, 48, 136, 139, 140, 149, 151; Texas Primary, 36, 40, 134; Texas Probate, 47, 48, 139; Texas Superior, 35, 36, 38; Texas Supreme, 4, 5, 7, 8, 9, 10, 11, 12, 15, 16, 17, 44, 45, 46, 50, 52, 91, 136, 140, 142, 144, 146, 149, 151; U. S. Supreme.....	11, 33, 136	
Cox, I. J., 94, 217, 248; John T., 130; Thos. W.....	130	
Crawford, E. W.....	124	
Creek War.....	63	
Crockett, David	101	
Cruz, Joseph A.....	234	
Cuervo, José Tienda de.....	165	
Dall, ——	193	
Dancy, John W.....	130	
Darlington, J. W.....	97	
Darst, Jacob C.....	314, 315	
Davis, Edmund J., 16, 92; Geo. W., 314, 315; Jefferson.....	56	
De Bow, Colonel.....	91	
De Bray, Colonel.....	57	
Dearduff, Wm.....	314	
Decherd, Professor.....	245	
Declaration of Independence.....	38, 40, 41, 117, 152	
Delaware Indians.....	56, 69	
De Leon, Alonso.....	163, 164, 254, 255, 256, 257, 260, 261, 263, 264, 266, 268, 269, 270, 271, 272, 274, 276, 277, 278, 279, 282, 283, 284, 285, 288, 289, 290, 291, 293, 294, 296, 298, 299, 300, 301, 302, 303, 305, 308, 310.....	311
Democratic party, 6, 12, 17, 18, 56; "Union".....	7, 12	
Denton, John B.....	78	
De Soto, Ferdinand.....	58, 62, 100, 180	
Despalier, Charles.....	314	
Devereux, W. P.....	321	
Devine, Judge.....	17	
Diaz, Porfirio.....	97	
Dickinson, Almerion.....	314	
Difficulties, Some, of a Texas Empresario.....	317	
Dodge, Henry.....	101	

Index.

Dodson, A. B.....	24, 28
D'Orvanne, A. B.....	230
Douay	99
Dougherty, ———	229, 230
Douglass, K. H.....	81, 213
Drew, Colonel.....	67
Dubal, Francisco.....	220, 221
Dumble, E. T.....	89
Early Experiences in Texas.....	170-173
Ector, M. D.....	7
Edwards, B. W.....	211
Ehrenberg, Pastor.....	173
Eldridge, J. C.....	56
Ellison, ———	231
Enduring Laws of the Republic of Texas.....	152-161
Epperson, B. H.....	15
Ernst, F.....	172, 227, 228
Escandon	165
Escorza, Juan Bautista.....	266, 297
Espinosa, Padre.....	218
Esteves, Francisco.....	262, 292
Evans, C. I.....	89, 90
Evidence.....	36, 37, 48, 49, 141
Fannin, J. W.....	74, 88, 169
Farish, Oskar.....	234
Fisher, George, 22; Henry S., 213; S. Rhoads.....	80
Fishbaugh, Wm.....	314
Floyd, Dolfin.....	314
Ford, John S.....	57
Fortrandt (or Fordtran).....	172, 227, 229
Forshey, C. G.....	131
Fontecuberta, Miguel.....	265, 295
Founding of first Texas Municipality.....	217-226
Fowler, Old Journal of Littleton.....	73-84
Fowler, Andrew J., 74, 75; Bradford C., 74; Godfrey, 73; Jack, 83; John H., 74, 75; Littleton Morris, 79; Wiley P.....	74
Franklin, Benjamin C.....	7, 43
Fredonian War.....	63, 88, 211, 212
French, B. F.....	100
Fulcheare, Graves.....	314, 315
Fulmore, Z. T.....	242
Fuqua, Benjamin, 314; Galby.....	314
Galbe, Conde de.....	256, 262, 284
Gaines, James.....	210
Gammel, H. P. N.....	241, 242, 317, 318

Index.

Garay, Francisco.....	162
Garcia, Luciano.....	168
Garrison, George P.....	85, 86, 94, 95, 102, 179, 281
Garvin, John E.....	314
Garza, Lorenzo de la, 285; Tomás de la.....	285
Gaston, John E.....	314
Gay, ———.....	79
General Council.....	38, 39, 40
George, James.....	314
German Pioneers in Early Texas.....	227-232
Gleichen, von.....	172
Goldbeck, L. N.....	321
Gonzal, Juan Leal.....	219
Gonzales, Augustin.....	203, 204
Gordon, Major.....	168
Gould, Robert S.....	17
Government "ad interim," 41, 42, 43, 101; Provisional, 38, 39, 40, 41, .....50, 101, 117	
Government of the People of the State of Texas.....	85, 86
Graham, Major, 55; Malcolm D., 7; W. M.....	55
Gray, A. C., 89; Peter W.....	7, 17, 80
Green, B. E., 235; John A.....	131
Greer, Commissioner, 244; County Case.....	6
Gregory, D. G.....	130
Grollette, Santiago.....	262, 291
Guajardo, Nicolas de.....	267, 297
Gutierrez de Laro, Bernardo.....	166, 167, 168
Hall, Robert.....	97
Hadley, Joshua.....	177
Halsey, Mary, 130; William.....	130
Hancock, John.....	15
Hardin, Colonel.....	234, 236
Harris, David, 22, 24, 227; D. W. C., 23, 28; S., 24; William.....	22
Hawkins, James.....	102
Haynie, John.....	133
Hebenstricke, Maurice.....	193, 195
Hemphill, John.....	5, 7, 9, 140
Henderson, J. Pinckney.....	4, 7, 57, 120, 136
Hennike, John.....	172
Henrie, Jean.....	163
Herder, George.....	172
Herrera, Simon.....	167
Hidalgo, Francisco.....	265, 295
Hill, Asa, 125, 126; J. L., 132; Monroe.....	125, 126
Hinds, James.....	314
Hinueber, Caroline von.....	227

Index.

Hockley, Colonel.....	54
Holland, J. K.....	96, 104
Holly, Mary A.....	319
Homestead Rights.....	5, 30
Hopkins, "Mustang".....	174
Horton, A. C.....	157
Houston, Sam....	4, 11, 12, 14, 54, 55, 56, 62, 63, 64, 65, 66, 80, 82, 91, 92, 101, 118, 120, 121, 153, 155, 158, 159, 171, 214, 215, 244, 245
Hubbard, R. B.....	17
Hunnings, Captain.....	24
Hunt, Memucan.....	55
Iiams, Jno.....	24
Ireland, John.....	17, 57, 122
Iturbide, Augustine.....	32, 191
Jack, Patrick C.....	21, 22, 24
Jackson, Andrew, 12, 54, 64; Thos., 314; T. J.....	54
James, John G.....	253
Jaral, Marquis del.....	193
Jarmon, R. B.....	125, 130
Jefferson, Thos.....	10, 63
Jennings, Thos. J., 4, 7; W. H.....	179
Johnson, Andrew, 16; F. W., 91, 213; "Hop," 176; John B., 234; "Ram- rod".....	176
Johnston, A. Sidney, 157; Joseph E.....	55
Joliet	99, 100, 180
Jones, Anson, 120, 136; Geo. W., 102; James H., 100, 101, 104; John B., 5; John Rice, 100-02, 104; Oliver, 128, 161; W. A. Burt, 101; William.....	5
Joutel	99
Judicial System of Texas, Development of.....	29-53, 134-151
Jurisprudence, American, 8; Colonial, 29; English, 8, 29, 30; Spanish, 29, 30, 32; Texas.....	8, 29, 30, 53, 85, 86, 137
Jury Commissioners, 148; grand, 37, 40, 147, 148; petit, 34, 35, 36, 37, 39, 41, 44, 45, 48, 49, 51, 134, 135, 137, 141.....	148
Kaufman, D. S.....	80
Kavanaugh, H. H.....	73
Kellogg, Johnnie.....	314
Kemper, Mayor.....	166
Kenney, John W., 124, 128; M. M.....	88, 177, 178
Kent, Andrew, 314; Joseph.....	315
Kickapoo Indians.....	230
Kimble, George C.....	314
King, V. O., 58; W. H., 89; Wm.....	314
Kleberg, Robt. J., 172, 228; Rosa, 170, 230; Rudolph....	170, 173, 227, 228

Index.

Labadie, N. D.....	21, 28
La Bahia del Espiritu Santo, Letter of Don Damien Manzanet to Don Carlos de Siguenza, relative to the Discovery of, 253-312; Notes on the History of.....	162-169
Lamar, Mirabeau B... 3, 54, 55, 56, 57, 65, 101, 118, 119, 155, 156, 158,	160, 171
Lane, J. J.....	89
Lang, W. W.....	17
La Salle.....	99, 100, 162, 163, 164, 165, 180
Lazaro, Juan Bautista.....	262, 292
Leal y Moso, Juan.....	219
Ledbetter, Hamilton.....	130
Lemus, Pedro.....	193, 194
Lester, ———	230
Lewis, Franklin.....	124
Lester, Captain.....	230
Lincoln, A.....	12
Likens, Colonel.....	57
Llanos, Raphael.....	195
Lipscomb, Abner.....	5, 7, 140, 144
Lockett, ———	166
Lockridge, M. F.....	100
Lockwood, Anthony, 77; Missouri.....	77
Long, James.....	6
Longcope, Charles S.....	130, 132
Looscan, Adèle B., 21, 243; M.....	88
Love, James.....	5
Lubbock, F. R., 54; Thos. F.....	213
Luzuriaga, Padre.....	262, 263, 291, 292, 293
Magee, Augustus W.....	6, 166, 167
Magruder, General.....	57
Manly, A. P.....	124, 125, 130
Manzanet, Fray.....	250, 253, 264, 276, 281, 294, 308, 321
Margry, Piérre.....	99, 180
Maria, Francisco de Jesus.....	265, 295
Marital Rights.....	5, 30, 50
Martin, Albert, 314; Wylly.....	314
Martincho.....	267, 268, 297, 298
Martinez, Francisco.....	257, 259, 262, 265, 272, 285, 287, 291, 295, 303
Marquette	100, 180
Mason, Charles.....	314
Maverick, Samuel A.....	57
Maxey, Sam Bell.....	88
McCaleb, W. F.....	94
McCoy, Jesse.....	314, 315
McCulloch, Ben.....	56

Index.

McDowel, Governor.....	234
McFarland, Bates H., 95; Isaac B.....	130
McFerrin's <i>Methodism in Tennessee</i>	73
McGehee, Commissioner.....	244
McKinney, A. T.....	90
McLeary, J. H.....	89
McLeod, John D.....	213
Meade, George C.....	55
Medina, Nicolas de.....	257, 285
Mendez, José Maria.....	125
Menefee, William.....	125, 128, 130, 243
Mexican War.....	6, 54, 56, 88
Mier Prisoners, Letters from.....	233-236
Milam, Ben R.....	101-213
Military Institute.....	129, 130, 131, 132
Miller, J. F., 233; Thos. R.....	314, 315
Milligan, ———	238, 239
Mills, John T.....	5
Milsap, Isaac.....	314
Mina, Francisco Xavier.....	168
Missouri Compromise of 1820.....	6
Mitchell, Asa, 176; Eli, 176; "Hog," 176; Robert.....	175
Moncloba, Conde de.....	256, 284
Monumental Committee.....	129, 130, 131, 132
Mound Prairie	99
Moore, Commodore, 321; John H.....	17, 55, 315
Morfi, Padre.....	179, 226
Morfit, Father.....	185
Morgan, James.....	21, 172
Morrell, Z. N.....	177
Muldoon, Padre.....	198, 201, 209, 228, 243
Muni, Pedro.....	270, 301
Munoz, Governor.....	219
Murphy, W. S.....	235
Myers, Colonel.....	123
Napoleon	6
Narvaez, Pánfilo.....	162
Newell, ———	81
New Orleans Grays.....	213
Nis, Manuel de la.....	219
Nomenclature, Early Texas.....	174-176
Norris, Samuel.....	211
Norton, M. P.....	5
Notes and Fragments.....	94-98, 174-178, 243-247, 319, 320

Index.

Ochiltree, William B.....	4, 5
Oregis, ——	193
Ortega, Miguel.....	184
Parmer, Martin.....	211
Padron, José.....	219
Paredes, Conde de.....	254, 281
Parrott, W. S.....	193, 195
Paschal, George W.....	15, 87
Payne, Robert.....	74
Peace Party.....	25, 26
Penniger, Robert.....	230
Perea, Antonio.....	265, 295
Perez, José Antonio, 220; Phelipe.....	220
Perry, James F., 195; ——,	166, 168
Petition and Answer.....	37, 38, 49, 50, 51, 52, 141, 142, 143, 144, 145
Pettus, John.....	173, 230, 231
Pineda, Alonso Alvarez de.....	162, 169
Pleading and Practice....	5, 11, 29, 37, 49, 50, 51, 52, 141, 142, 143, 144, 145
Plum Creek, Battle of.....	55, 96
Pollard, Amos.....	314
Ponton, Andrew, 314; Brownie.....	95
Porter, J. J., 76, 77; M. B., 104; Symmes.....	83
Portes, General.....	171
Potter, Colonel.....	54
Prietto, Nicolas.....	276, 308
Prison Journal of S. F. Austin.....	183-210, 250
Quaritch, Bernard.....	253
Questions and Answers.....	99-102, 179, 180, 248
Rabb, John.....	124, 125, 126, 129
Raines, C. W.....	93, 152, 179, 241, 242, 248
Ramirez, J. F.....	253
Ramon, Captain.....	97, 100, 219
Ramos, Alonso.....	267, 297
Ray, E.....	24
Reagan, John H.....	7, 99
Reconstruction.....	15, 16, 92, 146, 147, 159
Redford, ——	73
Reeves, Judge.....	17
Revolution, Texas.....	30, 32, 38, 88, 94, 100, 132, 170
Reynolds, ——	195
Richardson, Chauncey, 124, 125, 127, 129; Dr.....	81
Rigley, ——	173
Ripperda, Varon de.....	217
Rivers, ——	171

Index.

Riviera, Viceroy.....	218
Roberts, O. M., Life and Services of..	1-20, 89, 90, 92, 95, 96, 104, 105, .....117, 243
Robertson, Sterling C.....	88, 237, 238
Robinson, William.....	174
Rodriguez, Antonio, 220; Maria, 219; Salvador.....	219
Roeder, Albrecht von, 173; Louis von.....	232
Rosa, Luis de la, 184, 188, 191, 192, 193, 194; Miguel de la.....	184, 188
Ross, James, 195; John, 65, 66, 67, 68, 69; L. S., 122; ———..	166, 167, 168
Rowlett, Dr.....	81
Royce, Charles C.....	58
Rubio, Cayetana.....	193
Ruiz, Francisco.....	195
Runnels, H. R.....	11
Rusk, Thos. J.....	4, 65, 66, 79, 80, 81, 82, 243
Russell, William J.....	130
Ruter, Martin.....	74, 78, 83, 124
Rutersville College.....	83, 124-133
Ryan, Rosine.....	211, 215, 216, 319
Saint Denis.....	97, 98, 100, 219
Salcedo, Josef de, 267, 297; Manuel.....	167, 168
Salinas, Gregorio.....	266, 272, 296, 303
Santa Anna.....	31, 54, 152, 153, 209
Santio, Antonio.....	219
Sarmiento, Domingo.....	204
Schmitt, Edmond J. P.....	100, 179, 180
Schwartz, ———.....	228
Scott, ———.....	173
Secession.....	3, 12, 14, 15, 92, 133, 145
Sequoyah.....	58, 59, 66
Seron, Jorge.....	162
Sexton, Frank B.....	75, 82
Shaw, Joseph.....	130
Shawnee Indians.....	69
Shelby, David.....	96
Shepard, Seth.....	88, 90, 171
Sherlock, Commissioner.....	244
Simon, Kaspar.....	231
Sinks, George W., 130; Julia Lee.....	124, 245
Slavery in Texas.....	240, 319
Smith, Ashbel, 104, 133; Charles, 175; D. W., 195; Ellis, 79; Erasmus, 175; George W., 7; Henry, 24, 28, 65, 101; "Picayune," 175; Thos. J., 79; William P., 126, 130, 316; W. M., 24; W. R.....	94
Smithers, Dr.....	316
Smithwick, Noah.....	176
Solms-Braunfels.....	172, 232

Index.

Souverain, Colonel.....	22
Stafford, ———	175
Sowell, John.....	314, 315
Steele, William, 104; Lily.....	104
Sterne, Adolphus.....	211-216, 319
Stevens, Thaddeus.....	16
Stolje, R. D.....	172, 231
Story, Judge.....	144
Sullivan, D. W. N.....	124
Sutherland, ———	229
Sutton, W. S.....	248
Symmes, John Cleve.....	76, 77
Talamantes	217, 219
Talo, Pedro.....	270, 301
Taylors, Murder of.....	177, 178
Taylor, John, 7, 177; Levi.....	177
Tarver, M. M.....	57
Tenorio, Captain.....	23
Teran, General.....	212, 237, 238
Terrell, Kate Scurry, 88, 89; ———,	57
Texas Scrap Book.....	96
Thomas, C. W., 125, 127; Cyrus.....	58
Thomson, Alex.....	237, 238, 239
Thompson, Thos. M.....	26
Thorn, Frost.....	238
Thornton, Major.....	133
Thrall, H. S.....	73, 74, 81, 84, 99
Throckmorton, J. W.....	17
Timmons, Colonel.....	133
Toledo, General.....	166, 168
Toler, D. J.....	195
Torrey, Thomas.....	56
Townes, John C.....	29, 87, 134, 318
Travis, William B.....	21, 22, 23, 24, 25, 26, 28, 101
Trest, Miss.....	230
Tumlinson, Geo.....	314
Turner, A., 233; Winslow.....	314
Ugartechea, Colonel.....	25, 195, 314
University of Texas.....	18, 20, 29, 85, 86, 95, 96, 104, 134, 248, 250, 322
Vail, Albert L.....	130
Valero, Marquis de.....	219
Valladores, Conde de.....	97
Vasquez, General.....	158
Velasco	55

Index.

Vega, Manuel de.....	179
Viesca, José Maria.....	195
Villafañe, Angel de.....	162
Von Holst.....	240
Vrels, William.....	172, 230, 231
Waller, Edwin.....	157
Wallace, Andrew, 234; "Big Foot," 176; "One-eyed," 176; William, 176; William A.....	234
Ward, "Quashy," 176; "Peg-leg," 176; Thos. William.....	213
Watie, Stand.....	67
Webb, Judge, 55; William G.....	130
West, Elizabeth H.....	100, 179
Wharton, John.....	80
Wheeler, Judge.....	5, 7, 8, 9, 10, 11, 12, 140, 142
White, Dabney, 99; David, 234; John D., 234; Robt.....	314
Wigfall, Louis T.....	7
Wilcox, Charles, 26, 27; Geo. E., 27, 28; J., 24; W. D.....	28
Williams, Ezekiel, 314, 315; "Pot," 175; Robert, 175; Samuel, 88, 195, 228, 237; "Varmint," 175; "Waco".....	175
Williamson, R. M.....	171, 176, 228
Wilkie, F. B.....	102
Wilson, William F.....	234, 236
Winkler, A. V.....	89
Winsor, Justin.....	92
Woll, General.....	158
Women of Texas.....	240
Woods, Colonel.....	57, 234
Woolam, John C., 77, 83; "Mother".....	77
Wooten, Dudley G.....	1, 87, 88, 89, 93
Wright, Claib, 314; Clara, 73; George, 74; Travis.....	74
Yoakum, Henderson.....	87, 88, 89, 90, 91, 99
York, ———.....	173, 230, 231, 253
Young, William C.....	7
Zornow, Adolph von.....	228
Zuber, Abraham, 214; W. P.....	178, 211, 213, 214, 319

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